

Gibson Dunn ESG: Risk, Litigation, and Reporting Update (February 2025)

Client Alert | March 21, 2025

We are pleased to provide you with Gibson Dunn's ESG update covering the following key developments during February 2025. Please click on the links below for further details.

I. GLOBAL

1. 2025 proxy voting updates reflect a less prescriptive approach to director diversity

Institutional Shareholder Services (ISS), Glass Lewis, and institutional investors State Street, BlackRock, and Vanguard released updates to their proxy voting policies for 2025 with implications for how investors intend to analyze director diversity.

- ISS [announced](#) that it will no longer consider board gender and racial/ethnic diversity in its vote recommendations for the election of directors at U.S. companies in light of developments relating to diversity, equity, and inclusion practices. Instead, ISS will evaluate director vote recommendations based on other criteria in their [Benchmark and Specialty and voting guidelines](#), such as independence, accountability, and responsiveness.
- Glass Lewis issued a [Supplemental Statement on Diversity Considerations at U.S. Companies](#) (the Supplemental Statement) that modifies its approach to board diversity effective March 10, 2025. Glass Lewis will continue to apply [existing policies](#), including its diversity expectations for boards (generally expecting 30% gender diversity and at least one director from an underrepresented community) and its expectation that companies disclose individual or aggregate demographic information for directors. The Supplemental Statement emphasizes, however, that existing policies are based on market practice and “operate on a ‘comply or explain’ basis,” so for companies that do not meet these expectations, Glass Lewis will consider any company disclosures relating to “rationale or context regarding the composition of [companies’] boards,” including any disclosure related to challenges resulting from the “US legal and policy environment.” Moving forward, the Supplemental Statement indicates that when recommending votes against a director related to diversity, Glass Lewis will offer clients two recommendations: “one that applies [the] Benchmark Policy approach as articulated in [the] 2025 Benchmark Policy Guidelines for the US Market, and one that does not consider gender or underrepresented community diversity as part of the recommendation.”
- State Street’s [policy](#) removes numerical diversity targets and does not indicate that State Street may take negative voting action on board diversity, instead stating that “nominating committees are best placed to determining the most effective board composition and we encourage companies to ensure that there are sufficient levels of diverse experiences and perspectives represented in the boardroom.”
- BlackRock’s [policy](#) removes numerical diversity targets and expectations relating to disclosure of the board’s approach to diversity, but BlackRock may still vote against the nominating committee members of S&P 500 companies if they are an outlier relative to “market norms,” noting that 98% of S&P 500 firms have 30% or greater diversity.

Related People

[Lauren M. Assaf-Holmes](#)

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- Vanguard's revised [policy](#) softens its approach to board diversity but continues to highlight the need for a "sufficient breadth of skills, experience, perspective, and personal characteristics (such as age, gender, and/or race/ethnicity) resulting in cognitive diversity" and seeks disclosure of both the "range of skills, background, and experience" of each board member as well as "an understanding of the directors' personal characteristics to enable shareholders to understand the breadth of a board's composition." Vanguard also may vote against a nominating committee chair if board composition or related disclosure is inconsistent with market norms.

II. UNITED KINGDOM

1. UK Government publishes National Biodiversity Strategy and Action Plan for 2030

On February 26, 2025, the UK Government [published](#) the National Biodiversity Strategy and Action Plan for 2030—the "Blueprint for Halting and Reversing Biodiversity Loss"—in support of its commitment to the UN COP15 biodiversity framework. The framework commits the UK to achieving all 23 of the Kunming-Montreal Global Biodiversity Framework targets.

2. Financial Conduct Authority (FCA) publishes update on extending sustainability disclosure requirements (SDR) to portfolio managers

On February 14, 2025, the FCA updated its [webpage for Consultation Paper](#) CP24/8 on extending the SDR and investment labelling regime to portfolio management. The FCA has announced it no longer intends to publish a policy statement in Q2 2025. The FCA acknowledged that the consultation feedback from CP24/8 highlighted that it is taking longer than expected for some asset managers to comply with the SDR and labelling regime, and the potential impact of this on portfolio managers. This consultation follows the publication of [Consultation Paper](#) CP22/20 and corresponding [Policy Statement](#) PS23/16 on SDR and investment labels, which introduced a package of measures for fund managers. The FCA indicated it will continue to reflect on the feedback received and will provide further information in due course.

3. UK Emissions Trading Scheme (UK ETS) updates

On February 12, 2025, the UK Government launched a [consultation](#) on extending the UK ETS beyond the end of Phase I at midnight on December 31, 2030. The consultation proposes options and seeks views on extension into a second phase and the length of such extension, and whether to allow banking of emissions allowances between the two phases. The consultation closes on April 9, 2025. On February 5, 2025, the UK Government published the [Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(No. 2\) Order 2025](#) together with the [explanatory memorandum](#). The Order, which came into force on March 3, 2025, amends legislation that gives effect to the UK ETS. The Order amends the start of the second allocation period for stationary installations from 2026 to 2027, making 2026 a standalone year, and provides for the calculation of free allocation in 2026. In addition, the Order introduces three technical and operational amendments to the scheme regarding data publication (requiring the UK ETS authority to publish full details of transactions between accounts in the registry after a three-year delay to promote transparency), data sharing (by adding limited exceptions to the prohibition on disclosure of UK ETS data to support the development and implementation of related policies and statutory functions of the Climate Change Committee), and extending the ultra-small emitter eligibility criteria so that installations with low emission levels that started operations between January 2, 2021 and January 1, 2024 can apply to be classed as ultra-small emitters during the period 2026 through 2030.

4. Financial Reporting Council (FRC) announces UK Stewardship Code (Code) signatories ahead of consultation closure

On February 11, 2025, the FRC [announced](#) there are now 297 signatories to the Code, representing £52.3 trillion in assets under management, including 199 asset managers, 77 asset owners, and 21 service providers. The FRC's [consultation](#), which closed on February 19, 2025, was launched on November 1, 2024 to review proposals to amend the Code with a focus on streamlining reporting requirements and reducing the burden on signatories. As reported in our [November 2024 ESG Update](#), the key proposals include: (i) a revised definition of stewardship that emphasizes the need to create long-term sustainable value for clients and beneficiaries as a key outcome of good stewardship; (ii) a reordered and streamlined reporting process, including a new process for FRC evaluations that will focus on activities and outcomes rather than ongoing policies; (iii) two sets of Principles, one for asset owners and asset managers, and the other for service providers; and (iv) new guidance to support effective implementation and help signatories with the transition to the new reporting arrangements. Following the consultation, the FRC plans to publish an updated Code that will come into effect in 2026. Submission of reports in 2025 should continue to be in accordance with the 2020 Code.

5. FRC publishes final report on recommendations for the sustainability assurance market

On February 5, 2025, the FRC [published](#) its findings from the market study into the assurance of sustainability reporting—"Assurance of Sustainability Reporting Market Study: Final Report." The report builds on the FRC's Emerging Findings report [published](#) on October 15, 2024. The FRC has recommended three key actions to support the market's development: (a) to establish a clear UK policy framework for sustainability assurance that aligns with international frameworks where appropriate; (b) to create a unified regulatory consolidating standard setting, oversight, enforcement, and market monitoring; and (c) to improve quality of available information on sustainability assurance.

6. UK Government relaunches mission-led Net Zero Council (Council)

On February 5, 2025, the UK Government [relaunched](#) the Council, in support of the Clean Energy Superpower Mission—with a plan to help sectors accelerate to net zero. The Council's main functions will be to provide expert input on government net zero strategies, to drive decarbonization through convening and supporting senior leaders of high emitting businesses, and to engage the public by acting in their capacity as communicators to the wider business community and advocates for climate action. This initiative aligns with the [Plan for Change](#) to create jobs and economic opportunities.

7. FRC publishes thematic review of climate-related financial disclosures by AIM and large private companies

On January 21, 2025, the FRC [published](#) its [thematic review](#) of climate-related financial disclosures by AIM and large private companies. The review analyzes the first cycle of filings by in-scope entities under the mandatory reporting requirements under the Companies Act 2006. The thematic review concluded that preparers had endeavored to meet reporting requirements; however, there was inconsistent quality of reporting among the sample size (20 UK companies). The publication summarizes examples of good practice and indicates areas that preparers can improve on as reporting against these requirements matures in subsequent years. **III. EUROPE**

1. First Omnibus Simplification Package (Omnibus Package) proposes to scale back sustainability reporting and due diligence obligations

On February 26, 2025, the European Commission presented the Omnibus Package, which proposes significant amendments to the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD). For a detailed analysis, please see our [Client Alert](#).

2. EU Commission proposes to simplify investment regulations to boost public

and private investment

As part of the Omnibus Package, the European Commission also proposed simplifying the InvestEU Programme Regulation and the European Fund for Strategic Investments Regulation to reduce administrative burdens for businesses and citizens while enhancing competitiveness ([Omnibus II](#)), among other changes. The suggested amendments include reducing the frequency and scope of certain reports and exempting small final recipients, such as small and medium enterprises (SMEs), from specific rules. These measures are expected to save approximately EUR 350 million, with a particular benefit for SMEs. In addition, the proposal aims to boost investment capacity by around EUR 50 billion through a EUR 2.5 billion increase in the EU guarantee and the combined use of resources from three legacy programs. This is expected to drive growth and innovation in key sectors such as clean tech, digitalization, and sustainable infrastructure.

3. EU Commission launches “Clean Industry Deal”

On February 26, 2025, the European Commission published its proposal for the “[Clean Industrial Deal](#)” to accelerate decarbonization and boost clean technology industries. Among other things, the proposal includes a newly launched Action Plan on Affordable Energy to lower energy costs for industries, businesses, and households, while promoting the transition to a low-carbon economy. Furthermore, the Commission aims to increase demand for EU-made clean products by introducing sustainability, resilience, and “made in Europe” criteria in public and private procurements as part of the new Industrial Decarbonisation Accelerator Act. The Clean Industrial Deal also strives to increase access to financing by proposing an Industrial Decarbonisation Bank with a EUR 100 billion funding target and the adoption of a new Clean Industrial Deal State Aid Framework.

4. EU will introduce new recycling rules for fashion brands and cut down food waste

Following the initial proposal to revise the EU’s Waste Framework Directive in July 2023, EU lawmakers finally [reached a provisional agreement](#) for an updated directive on February 19, 2025. The amended rules aim to reduce textile waste by asking companies to establish extended producer responsibility schemes that will ultimately require textile producers and fashion brands to pay for the collection and recycling of their clothing. The new law will apply to both EU companies and non-EU companies who place products on the EU market. In addition, EU lawmakers also agreed to introduce binding food waste reduction targets that need to be reached by December 31, 2030: 10% in food processing and manufacturing and 30% per capita in retail, restaurants, food services, and households. As a next step, the EU Parliament and the Council will need to formally adopt and endorse the agreement.

5. EU Platform on Sustainable Finance (PSF) proposes to reduce EU taxonomy reporting burden

On February 5, 2025, the PSF, which advises the EU Commission on the development of sustainable finance policies, [published its recommendations](#) for reducing the EU Taxonomy reporting burden. The proposal aims to simplify compliance, improve data transparency, and ease administrative challenges for businesses while still maintaining sustainability goals. PSF suggested, in part, introducing a materiality principle applicable to all entities, defining clear guidelines for the use of estimates within the taxonomy framework, and refining the “do no significant harm” (DNSH) assessment. The latter was already taken up by the EU Commission in its Omnibus Package, which explicitly seeks to simplify the DNSH criteria.

6. CSRD transposition

No countries transposed the CSRD in February. In light of the Omnibus Package, we expect that further implementation will be paused until the proposed directives are adopted

by the EU Parliament and the Council. Furthermore, it should be taken into account that potential amendments to the CSRD would need to be transposed into national law as well. An overview of the current transposition status of CSRD into national laws can be found [here](#).

1. Science Based Targets initiative (SBTi) releases draft of new standard

On March 18, 2025, SBTi [released](#) the initial draft of its revised [Corporate Net-Zero Standard](#) to solicit feedback from businesses and other stakeholders. The revision's goal is to align with the latest climate science and “ensure that th[e] standard continues to enable companies to set and deliver ambitious, science-based targets consistent with achieving net-zero emissions at the global level by 2050.” Among other changes, the revised standard includes the following: (i) separation of Scope 1 and Scope 2 targets (including to encourage low-carbon electricity targets), (ii) additional flexibility in setting Scope 3 targets (including options to set targets for green procurement and revenue generation, rather than emissions reductions, and a focus on emissions-intensive activities), (iii) opportunities to use carbon removal for unabated and residual emissions, (iv) a process to track and report progress against targets, and (v) streamlined requirements for medium-sized companies in developing markets and SMEs. The consultation period is open until June 1, 2025.

2. Senate bill and letters from U.S. state officials and federal lawmakers regarding impacts of CSRD and CSDDD on U.S. businesses

On March 12, 2025, U.S. Senator Bill Hagerty introduced the draft [Prevent Regulatory Overreach from Turning Essential Companies into Targets Act](#) (Protect USA Act), a bill aimed at safeguarding U.S. businesses from the extraterritorial enforcement of foreign sustainability due diligence regulations. The draft bill would prohibit companies in strategic industries, particularly those involved in natural resource extraction and industrial production, from complying with foreign sustainability frameworks that exceed U.S. legal requirements, including, notably, foreign subsidiaries of U.S.-based companies. While the proposed bill explicitly refers to the CSDDD, which imposes extensive environmental and social due diligence obligations on companies operating or doing business in the EU, the wording of the bill suggests that other foreign sustainability regulations, such as the CSRD, could also be covered. It also proposes to penalize persons who take adverse actions against entities integral to the national interests of the United States related to a foreign sustainability due diligence regulation, creating a private right of action against any person who violates this prohibition. Because the bill has been introduced in the Senate, it will likely require approval by 60 Senators to overcome a potential filibuster. Twenty-one state officials sent a [letter](#) to President Trump on February 25, 2025, asking the United States Trade Representative to investigate CSRD, CSDDD, and related directives under Section 301 of the Trade Act of 1974 and “consider the impact of these directives as part of any overarching trade initiatives” with the EU. The state officials claim that EU sustainability directives are overreaching and burdensome to U.S. economic interests. Similarly, in a [letter](#) dated February 26, 2025, Senate Banking Committee Chairman Tim Scott and four other Republican lawmakers urged the U.S. Department of Treasury and National Economic Council to “support European calls to indefinitely pause CSDDD,” find that its “extraterritorial application is untenable and detrimental to global productivity,” that civil liability under CSDDD should be removed, and clarify that “U.S. companies are not bound by net zero transition plans akin to those imposed on EU firms.”

3. U.S. Environmental Protection Agency (EPA) set to reconsider 2009 endangerment finding on greenhouse gases

As part of his [executive order](#) titled “Unleashing American Energy,” President Trump directed the Administrator of the EPA to submit recommendations “on the legality and continuing applicability of” the EPA’s 2009 endangerment finding. The endangerment finding declared that greenhouse gases pose a threat to public health and welfare and serve as the basis for EPA greenhouse gas regulations under the Clean Air Act. On March

12, 2025, part of a larger EPA [announcement](#) of the “greatest and most consequential day of deregulation in U.S. history,” new EPA administrator Lee Zeldin has recommended reconsideration of the endangerment finding and the regulations that rely on the finding, signaling the potential deregulation of greenhouse gas emissions at the federal level. For further details on the EPA’s deregulatory actions and the effect on the regulatory environment for light- and heavy-duty motor vehicles and off-road engines, see our recent [Client Alert](#).

4. Texas judge upholds Biden Administration Labor Department ESG fiduciary rule

In a memorandum opinion and order issued on February 14, 2025, the U.S. District Court for the Northern District of Texas [held](#) that the U.S. Department of Labor’s [rule](#) allowing fiduciaries to consider ESG and other collateral factors as a tiebreaker when deciding between competing investment options does not violate the Employment Retirement Income Security Act of 1974 (ERISA). This rule was finalized by the Biden Administration’s Labor Department in 2022 and overturned 2020 guidance from the Trump Administration that restricted the consideration of non-pecuniary factors such as ESG in investment decisions. Specifically, the court found that the rule is still valid under the *Loper Bright* ruling, which reversed *Chevron* deference, because the rule “does not permit a fiduciary to act for other interests than the beneficiaries’ or for other purposes than the beneficiaries’ financial benefit.”

5. Litigation related to freeze on distribution of federal funds

Under the “Unleashing American Energy” [executive order](#), President Trump also directed the federal government to halt the disbursement of funds appropriated through the Inflation Reduction Act and the Infrastructure Investment and Jobs Act. In response, Pennsylvania Governor Josh Shapiro, along with Pennsylvania agencies such as the Pennsylvania Department of Environmental Protection, filed a [lawsuit](#) on February 13, 2025 claiming that federal agencies are unlawfully restricting these agencies from accessing Congressionally-appropriated federal funds in violation of Constitutional separation of powers. Separately, in response to a January 27 [memorandum](#) from the U.S. Office of Management and Budget that instituted a near-total federal funding freeze, 22 states, the District of Columbia, and the governor of Kentucky sought and were [granted](#) a temporary restraining order blocking the federal funding freeze, which was extended indefinitely through a [preliminary injunction](#) on March 6, 2025.

6. Coalition of 22 state attorneys general challenge New York’s Climate Change Superfund Act

On February 11, 2025, 22 state attorneys general filed a [lawsuit](#) challenging New York’s Climate Change Superfund Act (Superfund Act). The Superfund Act, described in our [December 2024 ESG Update](#), was signed into law last December and imposes strict liability on fossil fuel companies for greenhouse gas emissions, requiring these companies to contribute a total of \$75 billion to a climate resilience fund through 2050. The lawsuit argues that the Superfund Act violates the federal constitution, the New York constitution, and federal law. Specifically, among other claims, the suit alleges that the Superfund Act violates the Supremacy Clause of the U.S. Constitution because it is preempted by the Clean Air Act and violates the dormant Commerce Clause of the U.S. Constitution because it targets energy producers headquartered in other states by imposing “clearly excessive penalties.” Vermont [passed](#) a similar law in May 2024 that has also been the subject of [litigation](#). In that case, plaintiffs allege similar claims, including that the state law is preempted by the federal Clean Air Act.

7. District court dismisses two claims in California’s climate disclosure law legislation

As covered in our [January 2024 ESG Update](#), in *Chamber of Commerce v. California Air*

Resource Board, the U.S. Chamber of Commerce, California Chamber of Commerce, and other business and trade organizations are challenging California's Senate Bill No. 253 (SB 253) and Senate Bill No. 261 (SB 261), which require greenhouse gas emissions reporting and climate-related risk reporting for large companies doing business in California. On February 3, 2025, the U.S. District Court for the Central District of California [granted](#) California's motion to dismiss two of the plaintiffs' three claims relating to the Supremacy Clause and the Dormant Commerce Clause of the U.S. Constitution. The Court dismissed both claims as they relate to SB 253 without prejudice, holding that there were no justiciable claims because SB 253 does not impose requirements on plaintiffs or the companies they represent but instead directs the California Air Resources Board to adopt implementing regulations. As to SB 261, the first dismissed claim centered around whether the laws are invalid extraterritorial regulations under the Dormant Commerce Clause. The court did not find SB 261 to be discriminatory as to out-of-state competitors and dismissed this claim without prejudice. The second dismissed claim argued that the laws were preempted by the federal Clean Air Act under the Supremacy Clause. The Court dismissed this claim with prejudice, holding that plaintiffs did not identify a federal law or Constitutional provision that preempts SB 261's disclosure requirement or supports the assertion that, by requiring disclosure, SB 261 regulated emissions and should be preempted. The sole remaining claim alleges that the laws violated the First Amendment of the federal Constitution. On February 25, plaintiffs requested a preliminary injunction based on this remaining claim.

8. Introduction of new state-level climate laws

Several states, including [Colorado](#), [Illinois](#), Maine, [New Jersey](#), and [New York](#) have introduced new climate disclosure bills that generally would require companies with more than \$1 billion in annual revenues to report their Scopes 1, 2, and 3 greenhouse gas emissions, similar to California's SB 253. New York has also introduced a [bill](#) requiring disclosure of climate-related financial risk, similar to California's SB 261. In addition, [California](#) and [Illinois](#) have each introduced bills that would create a private course of action for individuals and businesses harmed by climate disasters, allowing them to bring suit against a "responsible party," which is generally an entity engaging in misleading practices in connection with fossil fuel products (for purposes of California's law) or an entity that emitted a product with total greenhouse gas emissions of at least one billion metric tons of carbon dioxide (for purposes of Illinois's law). Each of these bills has been assigned to a committee and thus has yet to be voted upon by the respective state legislatures. ***In case you missed it...*** The Gibson Dunn [Workplace DEI Task Force](#) has published its updates for February summarizing the latest key developments, media coverage, case updates, and legislation related to diversity, equity, and inclusion, including dedicated alerts describing:

- a [lawsuit](#) filed by the State of Missouri against Starbucks alleging that Starbucks is violating state and federal anti-discrimination laws;
- [potential DEI directive enforcement insights](#) from an Office of Personnel Management memorandum; and
- the [injunction](#) against significant aspects of anti-DEI executive orders.

More information on executive orders and other announcements from the White House is available in our [White House Executive Order Tracker](#). A collection of our analyses of the legal and industry impacts from the presidential transition is available [here](#). **V. APAC**

1. Hong Kong Monetary Authority shares ESG-related insights on 2025/26 Budget and issues guidance on climate-related risk management

On February 27, 2025, the Hong Kong Monetary Authority (HKMA) shared its [insights on the upcoming 2025/26 fiscal budget](#) where it highlighted plans for new government bond issuances aimed at raising funds for green infrastructure and other sustainable finance initiatives. In the same month, the HKMA also issued the [Adoption Practice Guide on](#)

[Greentech in the Banking Sector](#), which requires banks to integrate climate risk factors into their credit and market risk models, enhance internal controls, and improve the disclosure of climate-related financial risks. These initiatives are part of the Hong Kong Government's broader effort to integrate fiscal policy with sustainability objectives, driving the transition toward a resilient, low-carbon economy.

2. Hong Kong Mandatory Provident Fund Schemes Authority tightens ESG disclosure standards for pension fund managers

On February 24, 2025, the Hong Kong Mandatory Provident Fund Schemes Authority (MPFA) [introduced stricter ESG disclosure rules](#) for 12 major Hong Kong pension fund managers. The new guidelines require managers to clearly detail their ESG investment strategies and risk management processes in their communications, consistently measure ESG factors, and report ESG achievements in their annual governance reports. According to the MPFA, these changes affect 47 ESG-related funds managing assets worth HK\$36.6 billion (~US\$4.71 billion).

3. China releases framework for sovereign green bonds

On February 20, 2025, China's Ministry of Finance [introduced a framework for sovereign green bonds](#), enabling offshore issuance and global investment in China's green initiatives. Funds raised will support eligible green projects in the central fiscal budget, targeting climate change mitigation, pollution control, resource protection, and biodiversity preservation. The initiative seeks to expand high-quality green bond offerings and attract international capital to bolster China's low-carbon development.

4. China accelerates reform to market-based renewable energy pricing

On February 10, 2025, China [announced](#) a significant reform to its renewable power pricing system. The National Development and Reform Commission and the National Energy Administration issued a [joint notice](#) to transition from a fixed pricing system to a market-based pricing system. This reform focuses on three key aspects: allowing market forces to determine pricing, establishing a sustainable pricing and settlement mechanism, and adopting differentiated policies for existing and new projects. The new policy aims to accelerate the construction of a modern power system and ensure the sustainable development of renewable energy.

5. Hong Kong sets 2025 priorities for sustainable finance

On February 6, 2025, the Green and Sustainable Finance Cross-Agency Steering Group, established by the Hong Kong financial regulators, [published](#) its three priorities to advance sustainable finance in Hong Kong. These include enhancing sustainability disclosure by supporting ISSB Standards and developing an assurance framework, strengthening Hong Kong's role as a sustainable finance hub by expanding the Hong Kong Taxonomy and advancing carbon trading, and leveraging data and technology through the launch of the Hong Kong Green Fintech Map and improvements to public sustainability data tools.

6. New Zealand Parliament debates “anti-ESG” bill

On or around February 4, 2025, a controversial [Financial Markets \(Conduct of Institutions\) Amendment \(Duty to Provide Financial Services\) Amendment Bill](#) was introduced in the New Zealand Parliament seeking to prevent registered banks from refusing to provide banking services on ESG grounds. The bill specifies that a bank must not withdraw or refuse to provide services “except for commercial reasons” and creates an offense that provides for fines of up to NZ\$500,000 for each offense.

The following Gibson Dunn lawyers prepared this update: Lauren Assaf-Holmes, Susy Bullock, Carla Baum, Alexa Bussmann, Mitasha Chandok, Becky Chung, Mellissa Duru, Ferdinand Fromholzer, Michelle Kirschner, Julia Lapitskaya, Vanessa Ludwig, Babette

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Milz, Johannes Reul, Meghan Sherley, Helena Silewicz*, and QX Toh. Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's ESG: Risk, Litigation, and Reporting practice group: **ESG: Risk, Litigation, and Reporting Leaders and Members:** Susy Bullock – London (+44 20 7071 4283, sbullock@gibsondunn.com) Perlette M. Jura – Los Angeles (+1 213.229.7121, pjura@gibsondunn.com) Ronald Kirk – Dallas (+1 214.698.3295, rkirk@gibsondunn.com) Julia Lapitskaya – New York (+1 212.351.2354, jlapitskaya@gibsondunn.com) Michael K. Murphy – Washington, D.C. (+1 202.955.8238, mmurphy@gibsondunn.com) Robert Spano – London/Paris (+33 1 56 43 13 00, rspano@gibsondunn.com) **Helena Silewicz is a trainee solicitor in London and not admitted to practice law.* © 2025 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

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