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ESG: Risk, Litigation, and Reporting Update September 18, 2026

Gibson Dunn ESG: Risk, Litigation, and Reporting Update

We are pleased to provide you with Gibson Dunn’s ESG Risk, Litigation, and Reporting update covering the following key developments during August 2026. Please click on the links below for further details.

I. GLOBAL

1. **United Nations Environment Programme report concludes that exceeding 1.5°C warming is unavoidable and identifies an “overshoot, peak and decline” pathway**

On September 2, 2026, the United Nations Environment Programme (UNEP) released *Limiting Overshoot – Navigating exceedance of 1.5°C and pathways towards return*, a report examining the implications of exceeding the Paris Agreement’s goal of limiting global warming to 1.5°C, and possible paths forward. The report explains that recent scientific assessments indicate that exceeding 1.5°C above pre-industrial levels is unavoidable in the next several years, with the most optimistic scenario placing peak warming at 1.8°C. Nonetheless, UNEP reaffirms that the 1.5°C limit “remains the foundation of international climate policy.” It warns that the probability of crossing irreversible tipping points, including destabilization of major ice sheets, degradation of the Amazon rainforest, and disruption of the Atlantic Meridional Overturning Circulation, rises with both the level and the duration of warming.

The report identifies an "overshoot, peak and decline" pathway that can minimize the magnitude and duration of temperatures exceeding 1.5°C and eventually return temperatures to below 1.5°C. Success will require "[r]apid, collective and global action" that prioritizes not only reduced greenhouse gas emissions, but also carbon dioxide removal. The report highlights the importance of both mitigating the damage from and adapting to the impacts of exceeding 1.5°C, explaining that both are "urgent, mutually reinforcing, interdependent, and necessary to limit overshoot."

2. **International Financial Reporting Standards Foundation Trustees announce five-year plan**

On August 18, 2026, the International Financial Reporting Standards Foundation (IFRS Foundation) Trustees announced a set of initiatives intended to strengthen the IFRS Foundation. The initiative includes approval of a five-year operating and financing plan for the International Accounting Standards Board (IASB) and the International Sustainability Standards Board (ISSB). The IFRS Foundation noted the funding plan reflects, in part, "the widespread global acceptance of IFRS Accounting Standards." Funding from philanthropic, jurisdictional, and other contributors has been secured to resource the ISSB's priorities through 2031, bridging its initial seed funding and the more "durable, long-term funding model" the IFRS Foundation Trustees expect to implement as adoption of the ISSB Standards continues to increase. More than 45 jurisdictions are now using ISSB Standards, and companies in 18 jurisdictions are expected to issue reports by 2027.

For the IASB, the plan confirms a "primarily single-location model" and permits short-term use of the IASB's accumulated reserves while a long-term funding plan is implemented. The plan rests on a "principle of shared responsibility" that seeks financial contributions from beneficiaries of the IFRS standards.

The IFRS Foundation Trustees also published proposed targeted amendments to the IFRS Foundation's Constitution, which are open for comment until November 16, 2026. The proposed amendments implement a plan to slowly reduce the size of the IASB and ISSB to 10 board members each by 2028.

Other highlights:

- On August 18, 2026, the World Bank priced a $4 billion Sustainable Development Bond maturing in August 2033. The offering attracted more than $11 billion in orders from over 150 investors, comprising 43% banks, bank treasuries, and corporates; 30% central banks and official institutions; and 27% asset managers, insurance companies, and pension funds. Consistent with the World Bank's other issuances, the Sustainable

Development Bond is aligned with the International Capital Market Association's Sustainability Bond Guidelines.

- On September 15, 2026, Glass Lewis provided additional detail about its previously announced shift away from a single benchmark voting recommendation. Glass Lewis announced that it would provide four distinct research perspectives in evaluating items to be voted on at company stockholder meetings: (i) Business Fundamentals, (ii) Foundational Governance, (iii) Global Stewardship, and (iv) Sustainability Focused. The new research perspectives are targeted to become operational in September 2027, with Glass Lewis' existing Benchmark Voting Policy Guidelines to remain in effect for the 2027 proxy season (subject to limited updates). Glass Lewis further stated that it planned to launch a comment period in September of this year on the four research perspectives.

II. UNITED KINGDOM

1. **London Stock Exchange publishes revised AIM Rules, removing the requirement to comply or explain against a corporate governance code**

On August 5, 2026, the London Stock Exchange (LSE) published AIM Notice 64 and revised AIM Rules for Companies, which took effect immediately. The changes implement proposals consulted on in AIM Notice 62 (published on June 4, 2026), subject to minor refinements. The LSE received 30 consultation responses, which it described as overwhelmingly supportive.

The most significant governance change is the removal of the requirement for AIM companies to adopt a recognized corporate governance code and to report against it on a "comply or explain" basis. AIM Rule 26 instead requires disclosure of the company's approach to: (i) board composition; (ii) each director's roles, responsibilities and functions; (iii) the structure of executive and non-executive remuneration and its alignment with performance; (iv) the risk and controls framework; and (v) shareholder engagement.

Other changes include, but are not limited to, replacement of the working capital statement with a capital resources disclosure, permission for companies to have dual-class share structures on admission, and a new Express Market admission route. The revised rules also raise the threshold at which a transaction becomes a notifiable "substantial transaction" to 25% of any of the class tests, and the accompanying guidance provides that an AIM company may additionally be required to seek shareholder approval for a transaction exceeding 100% of any class test (excluding the profits test) which does not amount to a fundamental change of business, with the LSE to be consulted in advance where approval is not sought.

Special voting shares may now be adopted only at admission and only by directors, employees, investors or shareholders (or entities established for their sole benefit). The associated voting rights are not transferable and they may not be voted on remuneration, related party transactions involving the holder, or cancellation of admission.

2. **Financial Conduct Authority publishes guidance for insurers and mortgage lenders on climate adaptation and resilience**

On August 4, 2026, the United Kingdom's Financial Conduct Authority (FCA) published information for regulated firms on how physical risks from climate change, in particular flooding, may affect the property insurance and mortgage markets. The FCA cites Environment Agency estimates that 6.3 million properties in England are at risk of flooding, rising to a possible 8 million by 2050.

The FCA identifies five key risks to consumers and markets: (i) reduced access to insurance; (ii) insurance markets functioning less effectively; (iii) consumers finding it harder to obtain mortgages; (iv) existing homeowners facing higher costs and less choice; and (v) markets finding it harder to price climate risk accurately.

The FCA sets out matters for insurers, mortgage lenders and firms generally to consider. The FCA states that it cannot mandate that firms provide commercial services or serve particular groups of consumers, but encourages firms to consider how climate-related risks affect the value and pricing of their products, to explain clearly what policies cover and any exclusions that apply, and to consider assisting customers in obtaining alternative cover where a policy is not renewed. Mortgage lenders are reminded of their obligations under the Consumer Duty and of Flood Re's scheduled expiry in 2039. The FCA also notes that risk assessment tools continue to develop, citing a Climate Financial Risk Forum benchmarking study from October 2025 that found significant variation in physical risk estimates for the same properties across data vendors. The FCA adds that it wants to "work with firms to understand emerging risks and challenges," and directs firms to bilateral engagement, its Regulatory Sandbox (including a Climate Scenarios Cohort due to launch in Q1 2027), and industry guidance developed through the Climate Financial Risk Forum.

3. **First phase of biodiversity net gain reforms comes into force in England**

The Biodiversity Gain (Town and Country Planning) (Amendments and Transitional Provisions) (England) Regulations 2026 (SI 2026/790) came into force on August 6, 2026. As explained by the UK government's Department for Environment, Food and Rural Affairs (Defra), they form the first phase of a wider package of reforms to mandatory biodiversity net gain (BNG) in England. Mandatory BNG operates under Schedule 7A to the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) as a deemed condition of planning permission. Unless an exemption applies, it requires development in England to deliver a biodiversity gain of at least

10% above the pre-development biodiversity value of the site, secured and maintained for at least 30 years. It has applied to major development since February 12, 2024, and to small sites since April 2, 2024.

The changes apply to applications for planning permission made on or after August 6, 2026 and: (i) exempt developments on sites of 0.2 hectares or less, provided that priority habitats are not affected; (ii) exempt temporary development (i.e., land to be reinstated within five years or less), subject to the same qualification; (iii) modify the biodiversity gain hierarchy for minor development, allowing registered off-site units to be used on an equal footing with on-site habitat creation; and (iv) remove the existing exemption for self and custom build development. The two new exemptions do not apply to applications made before August 6, 2026, or to permissions granted under section 73 of the Town and Country Planning Act 1990 where the original permission was applied for or granted before that date.

Defra has indicated that a second phase of reforms is in development, and is expected to include exemptions for development where the primary objective is to conserve or enhance biodiversity and for development enhancing parks, playing fields and public gardens, together with changes to the statutory biodiversity metric. The statutory biodiversity metric is the government's official tool for measuring biodiversity value for BNG purposes, expressing it in standardized "biodiversity units" calculated by reference to a habitat's size, type and distinctiveness, condition, and strategic significance.

Other highlights:

- On August 27, 2026, Defra published new guidance on the application of BNG to nationally significant infrastructure projects (NSIPs) and updated existing BNG guidance to clarify how it applies to NSIPs. BNG becomes mandatory for new NSIP applications in England from November 2, 2026, subject to a biodiversity gain objective of at least 10%. The final biodiversity gain statements were laid before Parliament in June 2026.
- On August 26, 2026, the UK Department for Energy Security and Net Zero (DESNZ) confirmed, in an update to its UK Emissions Trading Scheme (UK ETS) scope expansion consultation, that expansion of the UK ETS to waste incineration and energy from waste will not take place in 2028 as intended, with a new timeline to follow in due course. DESNZ acknowledged that the uncertainty had undermined planning by local authorities and industry. The EU Emissions Trading Scheme (EU ETS) continues to apply to Northern Irish waste incinerators under the Windsor Framework, the February 2023 agreement between the UK and the European Union revising the operation of the Protocol on Ireland/Northern Ireland. Under Article 9 of, and Annex 4 to, the Framework, the EU ETS continues to apply in Northern Ireland in respect of energy from waste installations, reflecting Northern Ireland's participation in the Single Electricity Market.

- As discussed in our July 2026 ESG Update, the revised Equality and Human Rights Commission statutory Code of Practice on Services, Public Functions and Associations came into force on August 5, 2026. The Code explains how the Equality Act 2010 applies in practice, with the most significant changes reflecting the UK Supreme Court's April 2025 ruling that the terms "sex", "woman" and "man" are to be understood by reference to biological sex.

III. EUROPE

1. **Guidance for Carbon Border Adjustment Mechanism published by the European Commission**

The European Commission published a series of 10 non-binding guidance documents on August 14, 2026 to support the implementation of the Carbon Border Adjustment Mechanism (CBAM) during its definitive period, which began on January 1, 2026, and the Commission supplemented the series on August 24, 2026 with guidance on verification and accreditation. Until 2025, importers of carbon-intensive goods into the EU were only required to report the emissions embedded in their imports during the transitional phase, but importers must now purchase and surrender CBAM certificates corresponding to those emissions. In 2027, the first annual CBAM declarations, covering imports made in 2026, will be due.

The guidance assists operators and importers in calculating the emissions embedded in their goods, with examples covering cement, hydrogen, fertilizers, iron and steel, aluminum, and electricity. It is intended to, among other goals, help businesses use actual emissions values for their 2026 imports rather than apply the European Commission's default values (which are typically less advantageous).

According to the European Commission, businesses should ensure that they are prepared for the verification of their emissions data and have processes in place to report actual emissions by September 30, 2027, when the first annual CBAM declarations (covering 2026 imports) are due.

2. **Authorization requirements for ESG rating providers specified by the European Commission**

A Commission Delegated Regulation (EU) 2026/1119 supplementing the EU's ESG Ratings Regulation (Regulation (EU) 2024/3005) was published on September 1, 2026, in the Official Journal of the European Union. Under the EU's ESG Ratings Regulation, ESG rating providers operating in the EU must be authorized or, for providers established outside the EU, recognized by the European Securities and Markets Authority (ESMA). ESG ratings assess a company's exposure to environmental, social, and governance risks or its impact on these factors, and are widely used by investors and financial institutions in investment and lending decisions.

The Delegated Regulation applies retroactively from July 2, 2026, in line with the ESG Ratings Regulation, and existing medium and large ESG rating providers must submit their applications by November 2, 2026. The Delegated Regulation specifies the information to be included in such applications. ESMA has published a master application template.

Other highlights:

- On September 7, 2026, the German Federal Government presented an amendment proposal to the EU's Packaging and Packaging Waste Regulation (Regulation (EU) 2025/40) (discussed further in our June 2026 ESG Update) at a preparatory meeting on the Environmental Omnibus in Brussels. The proposal aims to relieve producers placing less than 10 tons of packaging per year into the EU market from appointing an authorized representative in each Member State into which they ship, and registration in the new system would be suspended until mid-2028 pending the launch of a central European producer registration system. The German Federal Ministry for the Environment has stated that these changes must be made in the Regulation itself, as national legislation would not suffice, and that it is working to secure a majority among Member States. Notably, these obligations depend on and are subject to the national law implementing the PPWR, which is currently being developed.

- The European Commission continues its preparatory work for the application of the EU Forced Labor Regulation (FLR, Regulation (EU) 2024/3015), having recently published implementation guidelines for the FLR and launched the Forced Labor Single Portal, a central online hub providing implementation guidance, a provisional list of national competent authorities and supply chain risk resources. The FLR prohibits placing or making available on the EU market, or exporting from it, any product made wholly or partly with forced labor and applies to all products and sectors and to any EU or non-EU operator regardless of size or turnover. Unlike the United States' Uyghur Forced Labor Prevention Act (UFLPA), the EU regulation is not limited to a specific sourcing region, covers exports and EU-made goods, and includes no rebuttable presumption, so the authority must establish that forced labor was used. Submissions are due by September 28, 2026 and the law will become applicable in December 2027.

- On September 18, 2026, Commission Delegated Regulation (EU) 2026/2102 updating the product scope (Annex I) of the EU Deforestation Regulation (Regulation (EU) 2023/1115) entered into force, following its adoption by the European Commission on July 13, 2026 (as reported in our June 2026 ESG Update). It removes several products from the regulation's scope, while newly added products will become subject to the regulation from December 30, 2027.

- As reported in our June 2026 ESG Update, the European Commission adopted the simplified European Sustainability Reporting Standards (ESRS) on July 3, 2026. Following the expiry of the two-month scrutiny period on September 3, 2026, the revised standards will enter into force upon publication in the Official Journal, removing around 70% of datapoints and introducing new reporting reliefs aimed at reducing compliance costs.

- **Transposition Tracker:** An overview of the current transposition status of the CSRD into national laws and the "Stop-the-Clock" process under the Omnibus simplification package can be found **here**.

IV. NORTH AMERICA

1. **The Justice Department withdraws its Business Review Letter issued to Institutional Shareholder Services**

On August 5, 2026, the Justice Department announced its withdrawal of a Business Review Letter (Letter) issued to Institutional Shareholder Services (ISS) in 1987. The Letter stated that the Justice Department did not intend to bring any antitrust enforcement actions against ISS based on its understanding that the ISS "will offer advice only on matters relating to the exercise of voting rights on issues of corporate governance, and that ISS will not provide advice or engage in discussions with respect to the corporate operations or business activities." According to the Justice Department, this representation no longer "reflect[s] ISS's current business practices or the Antitrust Division's view of those practices" today. The Justice Department explained that it does not view proxy advising as "inherently problematic" but that it has significant concerns about competition and concentration of market power in the proxy advisory market.

2. **A federal district court strikes down New York's climate "Superfund" law**

On August 31, 2026, the U.S. District Court for the Northern District of New York (Court) struck down New York State's Climate Change Superfund Act (Superfund Act). The Superfund Act, described in our December 2024 ESG Update, was signed into law in 2024 and imposed 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. As reported in our February 2025 ESG Update, 22 state attorneys general challenged the Superfund Act, arguing 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."

The Court granted summary judgment in favor of the plaintiffs as the Superfund Act is preempted by federal law, calling the law “an unusual and sweeping statute” that addresses the effects of climate change, a “uniquely international problem of national concern.” Further, the Court noted that the Superfund Act conflicts with the need for uniformity “on matters influencing national energy and environmental policy.”

3. **CARB releases new guidance on the 2026 GHG emissions reports required under SB 253**

On September 1, 2026, the California Air Resources Board (CARB) released new guidance concerning the preparation and submission of 2026 Scope 1 and Scope 2 GHG emissions reports as required under SB 253. The guidance generally is consistent with CARB’s previous guidance, but reporting entities are encouraged to provide additional details on Scope 1 and Scope 2 emissions in the first year of reporting, where available. The guidance also provides options for the emissions factor reporting entities may use for Scope 2 calculations. CARB also opened a voluntary intake platform for entities electing to submit their reports ahead of the November 10, 2026 reporting deadline.

Other highlights:

- On August 17, 2026, Canadian Prime Minister Mark Carney announced an investment package of up to C$10 billion in support of hydroelectric and wind energy projects valued at C$70 billion. The projects will include upgrades to existing hydroelectric facilities, development of new hydroelectric facilities, and construction of new transmission lines and infrastructure for electricity delivery.

- On September 4, 2026, the U.S. Securities and Exchange Commission (SEC) filed a subpoena enforcement action in federal court seeking to compel ISS to comply with an SEC administrative subpoena issued on July 21, 2026. According to the SEC, the subpoena requests documents that relate to the SEC’s investigation of ISS’ compliance with federal securities laws, such as data about ISS’s proxy recommendations and votes.

- On September 16, 2026, the SEC issued a proposed rescission of Rule 14a-8, stating that it “exceeds the scope of the Commission’s statutory authority and intrudes into matters of state law.” As part of the same release, the SEC also proposed amendments to Rule 14a-4(c) that are intended to “provide companies with greater flexibility and shareholders with greater control regarding proposals for which a company may seek discretionary proxy voting authority.” In a second release issued on the same day, the SEC proposed amendments to modernize proxy solicitation rules. These proposed amendments would shorten the minimum broker search period for proxy solicitations and eliminate (i) the requirement for registrants to deliver an annual report to shareholders, (ii) the delivery deadline when documents are incorporated by reference into a proxy statement, and (iii) the requirement that certain shareholders file soliciting material used in exempt solicitations. The public comment periods for both proposed rules will be open for 60 days after the proposing releases are published in the Federal Register.

- As reported by the New York Times, the EPA is reportedly planning to promulgate a rulemaking that would eliminate federal regulatory requirements for the publication and solicitation of public input on applications for air pollution permits for industrial facilities such as new data centers and associated power plants.

In case you missed it…

- The Gibson Dunn Workplace DEI Task Force has published its updates summarizing the latest key developments, media coverage, case updates, and legislation related to diversity, equity, and inclusion.
- A collection of our analyses of the legal and industry impacts from the current administration is available here.

V. APAC

1. **Australian Treasury consults on reducing the compliance burden of climate-related financial disclosures**

On August 23, 2026, the Australian Treasury released a consultation paper on measures to improve the efficiency of Australia's mandatory climate-related financial disclosure regime, which commenced on January 1, 2025 and is being phased in across three groups of reporting entities. The consultation seeks feedback on proposals to reduce compliance costs while maintaining the quality and credibility of disclosures, including changes to assurance requirements, additional guidance on key reporting concepts (such as what constitutes "*reasonable and supportable information … without undue cost or effort*"), and measures to limit burdensome climate data requests across supply chains, particularly in relation to Scope 3 emissions reporting. The consultation period closes on October 2, 2026.

2. **China outlines climate and carbon market priorities for 2026–2030, including expansion of national emissions trading scheme**

On August 13, 2026, China's Ministry of Ecology and Environment outlined its climate change priorities for the 15th Five-Year Plan period (2026–2030) in support of China's "dual carbon" goals of peaking carbon emissions before 2030 and achieving carbon neutrality before 2060. Key initiatives include accelerating the green and low-carbon transition across the energy, industrial, transport, and urban and rural development sectors; strengthening controls on non-CO_2 greenhouse gases, particularly methane, nitrous oxide, and fluorinated gases; and improving carbon emissions accounting and carbon footprint standards. The Ministry also confirmed that China's national emissions trading scheme will be expanded beyond the power, steel, cement, and aluminum sectors to cover additional high-emitting industries, including petrochemicals and chemicals, ultimately bringing around 80% of China's carbon emissions within the scheme's scope.

3. **New Zealand External Reporting Board releases draft guidance for quantifying climate-related financial impacts**

On August 4, 2026, the New Zealand External Reporting Board (XRB) released draft guidance to assist climate reporting entities in identifying, assessing, and, where appropriate, quantifying climate-related risks and opportunities and their associated anticipated impacts and anticipated financial impacts. The guidance builds on the XRB's July 2025 publication, Anticipated Financial Impacts – Framing Internal Conversations, and sets out a structured five-phase approach covering scoping, risk and opportunity identification, assessment, quantification, and ongoing monitoring and review. The guidance is neither mandatory nor binding on entities and is intended to support climate reporting entities in meeting the requirements of the Aotearoa New Zealand Climate Standards. The XRB is seeking stakeholder feedback and expects to publish a final version by the end of 2026.

Warmest regards,
Aaron Briggs
Susy Bullock
Perlette M. Jura
Ronald Kirk
Michael K. Murphy
Robert Spano

Chairs, ESG: Risk, Litigation, and Reporting, Gibson Dunn & Crutcher LLP

For further information about any of the topics discussed herein, please contact the ESG Practice Group Chairs or contributors, or the Gibson Dunn attorney with whom you regularly work.

The following Gibson Dunn lawyers prepared this update: Cléo Batista, Carla Baum, Aaron Briggs, Mellissa Campbell Duru, Becky Chung, Sydney Colopy, Georgia Derbyshire, Julie

Doria, Pierre-Emmanuel Fender, Ferdinand Fromholzer, Saad Khan, Vanessa Ludwig, Babette Milz, Johannes Reul, Nicholas Tok, Maggie Valachovic, Elizabeth Weber*, and Chelsea Werner.

ESG: Risk, Litigation, and Reporting Leaders and Members

Aaron Briggs
San Francisco
+1 415.393.8297
abriggs@gibsondunn.com

Susy Bullock
London
+44 20 7071 4283
sbullock@gibsondunn.com

Perlette Michèle Jura
Los Angeles
+1 213.229.7121
pjura@gibsondunn.com

Ronald Kirk
Dallas
+1 214.698.3295
rkirk@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

**A trainee solicitor in the London office who is not yet admitted to practice law.*