

**ACC NCR Integrating ESG in Corporate Practices: The Role of Counsel
Legal Developments and Disclosure Frameworks**
Designed to Accompany October 7, 2020, Presentation

This handout highlights some of the key legal developments impacting the ESG landscape in the United States and the prominent disclosure frameworks that ESG leaders use to inform their disclosures.

1. Key Legal Developments Impacting the ESG Landscape in the United States

- a. U.S. Securities and Exchange Commission (SEC)
 - i. Asset Management Advisory Committee, ESG Subcommittee
 - September 2020 evaluation of a number of potential regulations related to ESG performance measurement, proxy voting, rating systems, and disclosure
 - [Additional reading](#)
 - ii. August 2020 Modernization of Regulation S-K
 - Final rule revisions do not require or specify ESG-related disclosures
 - [Additional reading](#)
 - Commissioner Lee objects to omission of climate- and diversity-related disclosure requirements
 - [Additional reading](#)
 - iii. Investor Advisory Committee, Investor-as-Owner Subcommittee
 - May 2020 recommendation that the SEC update reporting requirements of issuers to include material, decision-useful ESG factors
 - [Additional reading](#)
 - iv. Statement by Chairman Clayton
 - January 2020 statement reaffirms the SEC's position that ESG-related disclosure requirements are not necessary in light of existing materiality standard
 - [Additional reading](#)
- b. U.S. Department of Labor (DOL)
 - i. June 2020 proposed rule contemplates codified prohibition on retirement plan fiduciaries' ability to make investment decisions based solely on ESG considerations
 - [Additional reading](#)
- c. Litigation
 - i. Securities Cases
 - Section 11 of the Securities Act of 1933 (cases involving alleged ESG-related misstatements and omissions in securities offering documents)

- *In re Equifax Sec. Litig.*, 357 F. Supp. 3d 1189, 1224 (N.D. Ga. 2019) (cybersecurity)
- *Ludlow v. BP, PLC*, No. 14-20420 (5th Cir. September 8, 2015) (oil and gas safety)
- *In re Massey Energy Sec. Litig.*, 883 F. Supp. 2d 597 (S.D. W. Va. 2012) (coal safety and compliance)
- *City of Brockton Retirement System v. Avon Products, Inc.*, No. 11-CIV-4665, 2014 WL 4832321 (S.D.N.Y. Sept. 29, 2014) (corporate governance)
- Section 10(b) of the Securities Exchange Act of 1934 and the SEC’s Rule 10b-5 (cases involving ESG-related anti-fraud allegations)
 - *In re Banco Bradesco A. Securities Litigation*, 277 F. Supp. 3d 600, 659–660 (S.D.N.Y. 2017) (allegedly false or misleading statements related to criminal corruption charges and bribery schemes)
 - *In re Signet Jewelers Ltd. Sec. Litig.*, No. 16-cv-6728, 2018 WL 6167889 (S.D.N.Y. Nov. 26, 2018) (allegedly false or misleading statements related to risky underwriting practices and sexual harassment)
- ii. Consumer Protection Laws
 - *Hall v. SeaWorld Entm’t, Inc.*, 747 F. App’x 449 (9th Cir. 2018) (allegation that marine park failed to disclose mistreatment of orcas)
 - *Sud Costco Wholesale Corp.*, 731 F. App’x 719, 720 (9th Cir. 2018) (allegation that retailer failed to disclose forced labor in prawn supply chain)
 - *Hughes v. Big Heart Pet Brands*, 740 Fed. App’x.876 (9th Cir. 2018) (allegation that marketer/distributor failed to disclose forced labor in fish and shrimp supply chain)
 - *Dana v. Hershey Co.*, 730 F. App’x 460 (9th Cir. 2018) (allegations that producer/distributor failed to disclose child and forced labor in chocolate supply chain)
 - *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 863 (9th Cir. 2018) (allegations that producer/distributor failed to disclose child and forced labor in chocolate supply chain)

2. Prominent ESG Disclosure Frameworks/Standards

- a. [Task Force on Climate-related Financial Disclosure](#) (TCFD)
- b. [Sustainability Accounting Standards Board](#) (SASB)
- c. [Global Reporting Initiative](#) (GRI)
- d. [CDP](#) (formerly the Carbon Disclosure Project)

- e. [International Integrated Reporting Council](#) (IIRC)
- f. [United Nations Global Compact](#)

3. Additional ESG Considerations for Financial Institutions

- a. [Principles for Responsible Investing](#) (PRI)
- b. Applicability of Section 13(g) of the Securities Exchange Act of 1934 to ESG Engagement with Company Boards
 - [Additional reading](#)

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