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Client Alert

News Flash

Latham & Watkins Environmental, Social & Governance Practice

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Timely ESG Updates for Public Companies Preparing Annual Reports

Developments span the climate disclosure landscape, risk factor disclosure, and diversity-related efforts.

In advance of the annual shareholder proposal and annual reporting preparation season, we believe that a number of recent environmental, social, and governance (ESG) developments warrant the attention of our public company clients. Below is a brief outline of these developments, together with links to additional materials. To the extent you have questions regarding any of these developments, please feel free to reach out to your Latham public company and ESG support.

- **California climate legislation.** A number of climate bills recently passed the California legislature and are anticipated to be signed into law by the governor shortly (see our Client Alert regarding two of these climate bills). This legislation, while it may be subject to legal challenge, is nevertheless likely to change the climate disclosure landscape in the US, particularly since these rules will apply to many companies that do business in California, regardless of whether they are incorporated or headquartered there. We encourage companies to consider whether they have potential exposure to these requirements, as well as how any such requirements may impact how they address other climate-related regulations.

- **Form 10-K risk disclosures and 2025 commitments.** As we head into the fall, it is a great time for public companies with calendar fiscal years to review their risk factor disclosure. When doing so, companies should consider whether they have adopted any ESG targets or goals that have 2025 deadlines. For such companies, the coming annual reporting season may represent a critical moment to shift risk-related disclosures to address the possibility of not meeting a 2025 goal.

  Given the Securities and Exchange Commission's continued attention to companies' climate-related disclosures, we encourage companies to consider now:

  - whether a realistic path toward their 2025 goals exists;
  - whether changes to underlying methodologies or assumptions are required; and
  - whether accurate risk disclosure addresses these considerations.

While companies are assessing their risk factors for addressing potential "misses" or changes to goals/targets, they should also consider whether their ESG regulatory risk factors need to be updated for the California legislation or recent ESG regulatory/legislative changes in non-US jurisdictions.

- **Diversity-related goals, compensation metrics, and disclosure.** Following the recent Supreme Court decisions on affirmative action, we are seeing a number of developments with respect to organizations' diversity-related efforts. Given the nature of these developments, including the breadth of organizations that are being targeted by shareholder engagement, litigation, and public campaigns, we recommend that public companies consult with counsel to review any diversity-related goals, compensation metrics, and public disclosures. We also note that reviewing diversity-related compensation metrics before the end of the year may provide companies with more options for addressing any issues that are identified before companies create their compensation-related disclosures for the purposes of their 2024 proxy statements.

If you have questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Paul A. Davies
paul.davies@lw.com
+44.20.7710.4664
London

Sarah E. Fortt
sarah.fortt@lw.com
+1.737.910.7326
Austin / Washington, D.C.

Betty M. Huber
betty.huber@lw.com
+1.212.906.1222
New York

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