

Environmental, Social and Governance (ESG)

As investors, other stakeholders and shareholder activists increasingly factor environmental, social and governance (ESG) criteria into their decision-making, mandatory and voluntary ESG efforts have become a significant focus for companies. Skadden takes a cross-disciplinary approach, drawing on attorneys from varied practice groups and offices who share their robust knowledge of this evolving field with clients seeking advice on ESG-related issues.

While global standards surrounding ESG have not been set, our attorneys closely follow the shifting landscape, as well as how this diverse, growing and increasingly important element of modern business will factor into transactions, strategies, business operations and public disclosures. Our team monitors rapidly changing ESG trends and advises companies on their implementation of a variety of ESG measures.

A number of our lawyers have served as staff members of the U.S. Securities and Exchange Commission (SEC), including senior enforcement officials who worked under the Biden administration. Our team is well versed in preparing, reviewing and advising on current and periodic reports, proxy statements and other filings made with the SEC to ensure our clients are up-to-date on ESG disclosure and compliance issues, including the recently proposed ESG fund name and strategy disclosure rules, and the proposed rules mandating detailed climate-related disclosures in annual reports and registration statements.

Our lawyers represent a variety of clients on ESG matters, including boards of directors, management and other stakeholders, public and private companies, financial institutions, private equity firms, technology and manufacturing entities, investment advisers, and private equity and financial services firms. Areas on which we have advised include:

- regulatory reporting and compliance, including disclosure requirements imposed by the SEC, stock exchanges and the European Union, such as the Sustainable Finance Disclosure Regulation;
- stakeholder analysis and ESG engagement;
- shareholder proposals on ESG matters;
- ESG reporting and related disclosure controls and procedures;
- investor reporting and activism;

- transaction due diligence and disclosures;
- cybersecurity and data resilience;
- engagement with proxy advisory firms and ratings agencies;
- disclosure requirements for registration forms, including Forms ADV, fund prospectuses, annual reports and adviser brochures;
- updating policies and procedures and controls focused on ESG investment strategies;
- litigation, including advising on and defending against civil and criminal claims brought by non-governmental organizations, as well as in human rights arbitration;
- investigations brought by legislative bodies, including U.S. congressional hearings and executive accountability hearings before U.K. parliamentary committees; and
- internal investigations and audits as proactive exercises or responses to specific issues, including document review, employee interviews and a review of standing policies and procedures.

More specifically, our work in each area has focused on:

Environmental

- Climate change risk disclosure.
- Sustainable finance, including green bonds.
- Green IPOs and equity offerings.
- Green fund investments.
- Greenwashing and related regulatory disclosure.
- Investigations and enforcement actions brought by the U.S. Environmental Protection Agency, the Environment Agency U.K. and the European Environment Agency.

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Social

- Human capital management disclosure.
- Diversity, equity and inclusion in management and boards.
- Racial justice and equity.
- #MeToo and workplace culture.
- Employee representation, including employee representative bodies.
- Equal pay audits and compliance with equal pay legislation, including reporting and strategies to reduce/eliminate the gender pay gap.
- Supply chain matters, including compliance with the U.K. Modern Slavery Act.
- Workplace conditions.
- Remuneration structures (for executives and employees) and employee share plans.
- Social bonds.

Governance

- Board oversight of ESG matters and related disclosures.
- Shareholder proposals on ESG matters.
- Investor, proxy advisory firm and other stakeholder engagement on ESG matters.
- Shareholder activism and proxy fights relating to ESG matters.
- Crisis management, continuity and reputational risk management.
- Executive compensation linked to ESG metrics.
- Compliance frameworks and regulatory risk management.
- Reporting frameworks and whistleblowing investigations.
- Other investigations and enforcement.