CADWALADER

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In this week's U.S.-focused edition, we look at the world's largest asset manager's updated voting guidelines which seek to strike a balance amidst the fraught political rhetoric surrounding sustainable investment. The Supreme Court curtails the power of federal agencies to interpret ambiguous statutes, a power which historically has been the foundation for key environmental policies, and the Environmental Protection Agency publishes its annual Climate Change Indicators, for the first time including Marine Heat Waves and Heat-Related Workplace Deaths.

BlackRock Introduces New Voting Policy for Climate Proposals

On July 2, the world's largest asset manager, BlackRock Inc., published updated decarbonization investment guidelines, which will require funds with specific climate change mandates to consider shareholder proposals that, for example, ask companies to make Scope 3 emissions disclosures. This will allow climate-focused funds to take an activist position on climate proposals put forward by shareholders and represents BlackRock's effort to navigate the political divide over decarbonization. As it stands, all of the asset manager's funds consider climate as a risk factor that affects financial performance, but those that follow the updated guidelines will consider a company's efforts to achieve Paris Agreement-aligned goals.

As we have discussed frequently, the firm's chief executive, Larry Fink, was an early advocate of sustainability investing but came under strong criticism from across the political spectrum. Over the proceeding years, the pressure resulted in the adoption of a stance that allowed the legislature and regulators to take the lead on climate policies. Earlier this year, **BlackRock scaled back** its participation in Climate Action 100+ (CA100+) after raising concerns about CA100+'s Phase 2 commitment which involved a change to the group's aim from pressuring companies to actively encouraging them to reduce their GHG emissions.

The new policy is BlackRock's attempt to consider the demands of European and U.S. clients that push the firm to invest sustainably, and to consider U.S. laws that require fund managers to prioritize financial returns. Initially the policy will apply to 83 Europe-based funds managing $150 billion in assets. Later in the year, U.S. and Asian funds with specific climate change mandates will then be asked if they wish to adopt the policy. In a letter to clients, the firm's global head of stewardship reportedly wrote that "[f]or clients who have not directed BlackRock to prioritize climate risks and decarbonization as an investment objective, [BlackRock] will continue to undertake our stewardship responsibilities in line with our benchmark policies, with a sole focus on advancing those clients' long-term economic interests. This will include consideration of climate-related risks and opportunities in a company's business model, where material to the company's ability to deliver long-term financial returns."

As we have frequently discussed, asset owners globally are under considerable pressure to ensure that adequate consideration is given to climate risks in line with their fiduciary duties. But they are under equal pressure from non-climate aligned groups who are opposed to so-called "woke capitalism." The updated guidelines from BlackRock appear to be its attempt to navigate the various interest groups within their global client base.

U.S. Supreme Court Overturns Chevron Doctrine, Curbing Powers of Federal Agencies

On June 28, 2024, **the U.S. Supreme Court overturned the Chevron doctrine**, significantly impacting administrative law and regulatory authority. The doctrine, established by the 1984 case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, directed courts to defer to federal agencies' interpretations of ambiguous statutes. This deference provided agencies with substantial scope to shape policy within their areas of expertise. Going forward, courts are expected to interpret statutes without giving weight to agency interpretations, thus reclaiming a more active role in defining the scope and meaning of laws.

This decision is likely to increase legal challenges to regulatory agencies like the Environmental Protection Agency (EPA) regarding their climate regulations, as courts will scrutinize their interpretations more closely. The loss of the *Chevron* deference introduces greater uncertainty for existing and future climate policies, as agencies may hesitate to implement bold regulatory measures without the assurance of judicial deference. The EPA's role is to protect people and the environment from significant health risks. It sponsors and conducts research and develops and enforces environmental regulations. The agency's 2022-26 Strategic Plan includes a new strategic goal focused solely on addressing climate change and advancing environmental justice and civil rights. To this end, the EPA has undertaken a number of initiatives we have discussed previously. For example, in January 2023, jointly with the Departments of Energy, Transportation, and Housing and Urban Development, the agency designed **the U.S. National Blueprint for**

Transportation Decarbonization; in May 2023, the agency **issued a proposed rule promulgating greenhouse gas (GHG) emissions standards** for fossil fuel-fired power plants; in February 2024, **the Inflation Reduction Act of 2022** made the agency $3 billion which it will use to fund zero-emission port equipment and infrastructure, and contribute towards climate and air quality planning at U.S. ports; and in May 2024, it announced a final rule aimed at strengthening, expanding and updating methane emissions reporting requirements for oil and gas facilities under **the EPA's Greenhouse Gas Reporting Program**.

Consequently, it is likely that there will be increased pressure on Congress to pass clearer and more specific legislation regarding climate policy to avoid ambiguities that agencies previously interpreted under *Chevron*. The decision shifts some power from executive agencies to the judiciary and legislature, potentially slowing the implementation of climate policies as courts and lawmakers become more involved in the process.

Agencies may need to adjust their strategies, ensuring that their regulations are more closely aligned with wording contained in the relevant statutes to withstand judicial scrutiny. The overturning of the *Chevron* doctrine makes it more challenging for regulatory agencies to implement and enforce climate policies autonomously, potentially leading to a slower and more contested path for environmental regulation.

The decision further underlines the political divide on climate change in the U.S.; the Supreme Court is dominated by conservative justices and the overturning of the *Chevron* doctrine was dissented to by the liberal justices. Dissenting Justice Elena Kagan called the decision "yet another example of the Court's resolve to roll back agency authority, despite congressional direction to the contrary."

U.S. Environmental Protection Agency Publishes Annual Climate Change Indicators

On July 2, 2024, the U.S. Environmental Protection Agency (EPA) released the fifth edition of its annual **Climate Change Indicators report**, which documents the ongoing impacts of climate change on the U.S. environment, health, and society. Key additions to this year's report are indicators on Marine Heat Waves and Heat-Related Workplace Deaths. The Marine Heat Waves indicator tracks trends in multi-day high ocean temperatures, showing increased frequency and intensity off of U.S. coasts, particularly in the Northeast and Alaska. The Heat-Related Workplace Deaths indicator reveals that from 1992 to 2022 nearly 1,000 workers died from heat exposure, with the construction sector being particularly affected.

Other significant findings in the report include:

- Global and U.S. Temperature Trends: 2023 was the warmest year globally, and the last decade was the warmest on record. The country has seen significant temperature increases, especially in the North, West, and Alaska.
- Heat Waves: Major U.S. cities are experiencing more frequent and prolonged heat waves, with an average of six per year in recent decades compared to two per year in the 1960s.
- Sea Surface Temperature: Rising consistently over the past century, contributing to shifts in marine species distributions and increased coastal flooding.
- Wildfires: The area burned by wildfires has grown substantially, particularly in the Western U.S., with all of the largest fire years occurring since 2004.

The report presents highlights from a subset of the EPA's total of 57 indicators which include historical data and observed trends related to the causes or effects of climate change. It is organized into themes including Greenhouse Gases, Extreme Events, Water Resources, Changing Seasons, Ocean Impacts, Rising Seas, and Alaska's Warming Climate, providing a detailed overview of climate-related changes and their interconnected effects.

The EPA's Climate Change Indicators report has a significant global impact, providing a comprehensive set of data and analyses that contribute to the global scientific understanding of climate change. By sharing detailed indicators on temperature changes, extreme weather events, sea level rise, and other environmental shifts, it supports international climate research allowing scientists and policymakers worldwide to compare and contextualize their local data. The indicators also serve as critical evidence for international climate policy discussions and negotiations and provide reliable, transparent data that can be used to support arguments for stronger climate action in forums such as the United Nations Framework Convention on Climate Change (UNFCCC) and other international climate agreements. By making complex climate data accessible and understandable, the EPA report aims to raise global public awareness about the impacts of climate change.

The EPA's Climate Change Indicators can be used by policymakers outside of the U.S. as benchmarks to measure their own progress in mitigating and adapting to climate change. The goals of providing comparative analysis are facilitating the setting of realistic targets, tracking advancements, and ensuring accountability in climate action commitments. Finally, the data on heat waves, sea level rises, and extreme weather events can help to identify the most vulnerable regions globally and assist in directing international aid and adaptation efforts to those areas that are most at risk from climate impacts.