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CLIMATE
Connecting Climate Change and the Law

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Fed Will Not Be a “Climate Policymaker” According to Chair

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The Chair of the U.S. Federal Reserve Board (Fed), Jerome Powell, stated in a **speech** at the Swedish Central Bank’s symposium on January 10 that the Fed is not a “climate policymaker." He stated that it was critical for the U.S. central bank to “[s]tick to [its] knitting” by following its statutory goals and authorities and not expanding its remit to include “other important social issues.” Chair Powell went on to explain that “[t]he Fed does have narrow, but important, responsibilities regarding climate-related financial risks” and that “[t]hese responsibilities are tightly linked to our responsibilities for bank supervision.” He confirmed that the public expects supervisors to ensure that banks understand and manage risks, including those connected to climate change, but that without legislation from Congress it would be “inappropriate” for the Fed to utilize its powers to influence finance and investment decisions by regulated entities.

These statements follow various climate-related actions taken by the Federal Reserve in recent months, including a January 2023 **report** published earlier this month titled “What are Large Global Banks Doing About Climate Change?” The report reflected the Fed’s examination of the approach taken by 30 global systemically-important banks to measure climate risk and their Scope 3 emissions. The report concludes that “despite some progress by large global banks to address climate change considerations, much work lies ahead to properly measure and disclose climate-related risks, and to better align financing activities with their net-zero targets.” The report states that the absence of a global standard or classification system has resulted in “inconsistencies” when assessing transition risks, which may “potentially lead to underestimation of these risks for the banking sector as a whole.” We also **reported** in December on the Fed’s consultation on a proposed “framework for the safe and sound management of exposure to climate-related financial risks for large banking organizations.”

Taking the Temperature: Chair Powell’s “stick to its knitting” comment has garnered the most media attention along with his closing remark that “[w]e are not, and will not be, a ‘climate policymaker.’” He also observed that the Fed’s mandate is narrower than that of many other central banks, and the Fed should “resist the temptation to broaden our scope to address other important social issues of the day” lest it risk the Fed’s case for independence. Notwithstanding these comments, and attracting less coverage, Chair Powell emphasized the Fed’s role as a prudential regulator and his intention to continue to act in that capacity in relation to climate change risk. That is consistent with the Fed report and consultation discussed above, which fit squarely within the Fed’s prudential

regulatory mandate but steer clear of policy issues such as attempting to influence banks to finance green transition efforts.

The UK Government Consults on Lower Emissions for Power Plants

January 13, 2023

By Duncan Grieve
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On January 9, the UK's Department of Business, Energy & Industry Strategy (BEIS) launched a **consultation** aimed at better aligning the UK's electricity generation market with the UK government's net zero targets, including a transition to a decarbonized electricity network by 2035, while also "[s]trengthening security" of the electricity supply. BEIS has proposed, among other things, lowering emission limits for new UK oil and gas plants beginning on October 1, 2034 and altering the frequency with which emissions are disclosed. BEIS also seeks to incentivize increased participation of low carbon technology in the capacity market auctions that ensure there is enough reliable capacity to meet the UK's electricity demands. To better ensure supply, particularly during times of stress on the electricity system, the consultation proposes strengthening the penalty regime for non-delivery of supply. The consultation contemplates soliciting stakeholder views on barriers to decarbonization and evaluating the relationship between the UK capacity market and government support for large-scale long-duration electricity storage. The government said it plans to publish a response in Spring 2023, outlining the proposals the government will implement.

In response to the announcement, Dan McGrail, chief executive of trade body RenewableUK, stated that "[i]t's vital that we decarbonise our electricity system completely by 2035, so this consultation represents an important step forward in that process," and "[w]e need to incentivise more investment in new low carbon flexibility in our modern energy system based on renewable technologies including wind, solar, tidal stream and green hydrogen."

Taking the Temperature: The launch of this consultation indicates that slow but steady progress is being made to address the twin aims of improving the UK's energy security while reducing power plant emissions. Critics will highlight the long timeframes outlined in the consultation and argue that these are incompatible with the goals of the Paris Agreement. But energy security is a key political priority in the UK and Europe, due in part to impacts caused by the ongoing war in Ukraine, and this initiative has the potential to positively impact emissions reduction targets and the transition to a low-carbon economy. Managing energy supply while cutting emissions is a significant challenge, but as with other climate-related government initiatives the participation of private industry in the process of formulating plans is welcome and crucial.

Consultation on Update to Global Biodiversity Standard

January 13, 2023

By Jason Halper
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In November 2022, the Global Reporting Initiative (GRI) launched a **consultation** on the latest draft of their biodiversity disclosure standard. The draft standard extensively updates the 2016 version (GRI 304) and is designed to assist companies report on their impact on nature. According to research **published** last year, less than half of the 5,800 largest global companies (made up of the largest 100 companies by revenue in 58 jurisdictions) report on biodiversity. To the extent adopted in a particular jurisdiction, the revised draft would require nature-related reporting on the organization’s activities and on its suppliers’ activities with the most significant impacts on biodiversity, “not all impacts.” The proposed standard also now includes additional disclosures to “report on the direct drivers of biodiversity loss” and emphasizes the importance of location-specific data to ensure greater transparency on the impacts on biodiversity. The consultation recognizes that it “can be challenging for many organizations” to report on biodiversity impacts, and the “upcoming biodiversity frameworks, such as the Science Based Targets Network (SBTN) and the Taskforce on Nature-related Financial Disclosure (TNFD) are developing methodologies to assist organizations to identify and prioritize the location of their most significant impacts.” The consultation is open for comments until February 28, 2023 and the expected publication date for the final updated standard will likely be in the second half of 2023.

Judy Kuszewski, chair of the Global Sustainability Standards Board, which is responsible for establishing the GRI Standards, stated that the updated standards will “provide the internationally accepted best practice for transparency on biodiversity impacts.” Furthermore, she stated that “I encourage all stakeholders and interested parties to participate in this consultation, because we need a standard that will be the global focal point for accountability on biodiversity impacts. Improved reporting – across sectors, regions and supply chains – is crucial for addressing information gaps and informing global solutions.”

Taking the Temperature: As we previously noted, the recently concluded COP15 in Montreal went a long way toward cementing nature and biodiversity concerns as a permanent feature of the sustainability discussion. Almost 200 countries adopted the Kunming-Montreal Global Biodiversity Framework and made funding commitments to achieve the Framework’s goals. Likewise, biodiversity concerns have received increased attention from regulators, standard setters and lawmakers. The GRI standards complement these efforts by attempting to “represent internationally agreed best practice and [to] align with recent developments and the relevant authoritative intergovernmental instruments in the field of biodiversity.” As we have advised, directors and management should take these and other relevant standards into account, including the SBTN and TFND, in determining appropriate disclosure for their

organizations, and the governance procedures necessary to develop the information that may be subject to disclosure.

Ceres 2022 Progress Report

January 13, 2023

By Zack Schrieber
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In its second report assessing how, and to what extent, S&P 100 companies have implemented climate-related policies into their own business initiatives, Ceres, through its **Accelerator for Sustainable Capital Markets**, found that the business community has largely "significantly improved . . . performance in establishing internal processes and systems for addressing climate change as a systemic risk." There are also indications that companies are "increasingly prioritizing smart climate lobbying" to "advocate for the economy-wide policies necessary to address the climate crisis." Ceres concluded that:

- An overwhelming majority (93%) of companies disclosed in their Form 10-K filings disclosure that there is a material risk posed by climate change to ongoing business operations. This reflected an increase of nearly 20% from Ceres's report last year.
- Nearly 80% of companies have conducted climate-related scenario analyses.
- Half of the companies have lobbied public officials within the last three years for climate policies aligned with the Paris Agreement. The same number of companies have also begun to develop "concrete" plans to implement climate-related policies and goals.
- 93% of companies have "affirmed the science of climate change," an increase of 19% from last year, and 68% of companies have publicly supported the Paris Climate Agreement.

While these headline numbers reflect improvement, Ceres takes the position that certain aspects of disclosure fell "short of expectations." For instance, Ceres pointed out that just one company acknowledged in its Form 10-K that the ongoing absence of settled federal climate policy in the United States continues to create uncertainty for long-term capital investments and may stymie innovation in climate-related science and technology. Ceres also observes little improvement in engaging with trade associations on science-based climate policy, as only 8% of companies have examined whether their own climate position aligns with that of their trade association, and merely 3% of companies have taken action to address their trade associations' positions on climate policy that conflict with company stances.

In 2020, Ceres published its **Blueprint for Responsible Policy Engagement on Climate Change**, providing companies with "concrete recommendations" for how to "establish systems that address climate change as a systemic risk and integrate this understanding into their direct and indirect lobbying on climate policies." This second report highlights that companies have responded, for the most part, with positive action.

Taking the Temperature: Ceres's findings reflect that some of the largest publicly-traded companies increasingly are making disclosure in certain areas of sustainability. The report provides a comprehensive analysis of the growing movement within the business

community to more effectively embrace science-based climate policies in an effort to properly adapt their business operations for a changing environment. Still, companies attempting to meet their own goals and initiatives must think critically about their third-party relationships, whether with trade organizations, clients or vendors. Obviously, an organization need not and could not effectively require all of its third-party business relationships to share all its views on sustainability. On the other hand, company directors and officers should consider informing themselves about the sustainability profiles of the organization's supply chain as well the positions adopted by trade or other associations in which it is a member. While it is not the case that contrary stances on climate issues require severing a relationship, the board and management should consider possible adverse consequences of divergent actions or positions taken by the company's third-party relationships, particularly at significant clients, vendors or industry groups, and over issues that are material and/or likely to generate external media or regulatory scrutiny.