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Republican AGs Probe Insurers' Participation in Industry Climate Groups

May 26, 2023

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On May 15, 2023, twenty-three Republican state attorneys general (AGs) sent a letter to members of the Net-Zero Insurance Alliance (NZIA) expressing "serious concerns" about whether the NZIA's requirements comply with federal and state laws, and demanding certain information. The letter observes that all recipients are members of the NZIA and some are members of the Net-Zero Asset Owners Alliance (NZAOA). Both organizations are UN-convened groups that seek to have their members transition their insurance or investment portfolios to net-zero GHG by 2050, in order to contribute to the implementation of the Paris Agreement. According to the AGs, the "push to force insurance companies and their clients to rapidly reduce their emissions has led not only to increased insurance costs, but also to high gas prices and higher costs for products and services across the board, resulting in record-breaking inflation and financial hardships for the residents of our states."

Without identifying support for this statement, the letter quickly shifts to legal issues, taking aim at the NZIA releasing its first "Target-Setting Protocol," which, according to the letter, requires members to "adopt one of the NZIA's defined climate targets by this summer, and requires you to commit to three of them by next summer. These targets are anything but aspirational—they require you to take specific courses of actions over the next two decades. For example, meeting NZIA's 'emissions reduction target' means choosing either an overarching insurance associated emissions reduction target of 34-60% by 2030, or targeting emissions on a sector-by-sector basis in line with a net zero pathway for that sector." The letter also advances challenges to NZAOA's target protocol, stating that "the NZAOA protocol requires its members to set targets for reducing their own Scope 1, Scope 2, and Scope 3 emissions, in addition to setting targets" with respect to portfolio companies "in at least three of four defined categories."

While the letter recognizes that NZIA's and NZAOA's protocols are "non-binding" and members retain unilateral authority to determine how or if to comply, the letter explains that the requirements, including that members must "comply-or-explain" their target-setting and other recommended efforts, may violate federal and state antitrust laws. One primary reason, according to the AGs, is that "an agreement among competitors not to do business with targeted individuals or businesses may be an illegal boycott, especially if the group's competitors working together have market power." The letter further details how the NZIA's protocol target requirements impose potentially impermissible "conditions on the terms of . . .

insurance contracts." For example, the letter states that requiring customers to meet certain emissions reduction and engagement targets is problematic given the market power held by NZIA's members and also "threaten[s] to dramatically increase prices, as reducing emissions and implementing climate plans typically involve decreasing output and production and/or substantially increasing costs across the value chain and, particularly, in the oil, gas, energy, and transportation sectors." The letter describes other potential violations of state law, including state laws that "limit reasons for refusal to provide insurance."

The letter requests that recipients produce several categories of information, including (i) communications with and among other members; (ii) communications with any American-based company concerning NZIA or NZAOA commitments; (iii) the extent to which NZIA or NZAOA is influencing the decision, if any, to reduce emissions associated with their insurance portfolios; (iv) efforts to support motor vehicle insurance clients to "go green;" and (v) whether any third-party asset managers manage investments on the members' behalf.

Taking the Temperature: The AGs letter to NZIA/NZAOA members demonstrates that Republican-led pressure on these types of industry climate coalitions are not likely to go away any time soon. Antitrust issues continue to be the leading legal argument against such coalitions, as we discussed earlier this year. However, the AGs also cite other industry-specific state and local regulations, such as a Utah statute prohibiting "unfair" discrimination among insurance policy holders "except on the basis of classifications related to the nature and the degree of risk covered or the expenses involved," and a Louisiana law prohibiting "unfair discrimination in favor of particular individuals or persons." As further support for their position, the AGs referenced Zurich Insurance Group and Munich Re's recent withdrawal from the NZIA, noting that Munich Re's official statement cited "material antitrust risks" as a reason for its decision.

We also have written extensively on similar concerns raised by Republican state attorneys general regarding coalitions involving financial institutions. For example, in March, twenty-one Republican attorneys general wrote a letter to over 50 U.S. asset managers raising similar antitrust concerns. The prior month, the chair of the House Financial Services Subcommittee announced a probe into banks' ESG practices, adding that the committee would also monitor efforts by the Federal Reserve to set climate-related goals for financial institutions. Last year, twenty-five Republican state attorneys general filed a lawsuit against the Department of Labor (DOL) to set aside a DOL rule governing the consideration of climate change and other ESG issues by retirement plan investment managers. As we have also reported, several states have enacted legislation restricting investment managers managing state funds from considering ESG factors in investment decisions, blacklisting from state business investment firms that supposedly "boycott" energy companies, or prohibiting asset managers from casting proxy votes to further "non-pecuniary purposes." Arrayed in opposition to these efforts are a variety of "pro-ESG" initiatives under way.

TNFD Publishes Final Draft Disclosure Framework

May 26, 2023

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On March 28, 2023, the Taskforce on Nature-related Financial Disclosures (TNFD) **announced the release** of the fourth and final iteration of its **beta framework** for nature-related risk management and disclosures, including a tiered approach to disclosure metrics. An update to the third draft released in November 2022, the draft framework is designed to help companies report on their nature-related risks and impact and ultimately direct capital flows into nature-related investment. A final set of recommendations is expected in September 2023.

The TNFD is an international initiative whose framework is modelled on the framework developed by the Task Force on Climate-related Financial Disclosures (TCFD). The TNFD consists of 40 members, including financial institutions, corporations and markets service providers, and is assisted by a forum of more than 750 members and 18 scientific organizations and standard-setting bodies.

The fourth iteration outlines, for the first time, the TNFD's approach to disclosure metrics, which the TNFD is striving to ensure are both science-based and practical for market participants to use as a part of their reporting cycle. "Like the TCFD, the TNFD is developing a global framework for risk management and disclosure, not a standard. The final draft draws from, and is designed to inform, relevant standards including those from the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI), both knowledge partners to the TNFD."

The task force proposes three tiers of disclosure metrics:

1. *Core Global Disclosure Metrics* that are relevant broadly to organizations across sectors and are reflected in global policy priorities, including the **Global Biodiversity Framework (GBF)**;
2. *Core Sector Disclosure Metrics* that enable capital providers to make comparable assessments of businesses within a sector; and
3. *Additional Disclosure Metrics* that enable report preparers to include metrics that might be particularly relevant to their business model and nature-related issues.

The disclosure-metrics approach seeks to "provide report users, as the providers of capital, with comparability across and within sectors; while at the same time providing report preparers

with flexibility, acknowledging the differences in nature-related issues across sectors and business models."

Another new component in the draft framework includes the TNFD's adaption of the system of greenhouse gas emission "scopes" (Scope 1, 2 and 3) to nature-related disclosures, using the labels "direct," "upstream," "downstream" and "financed" operations. The latest draft also includes guidance on the taskforce's proposed approach to the use of scenario analysis of nature-related issues that is aligned with the TCFD approach. The revised framework also now includes proposed guidance on engagement with affected stakeholders; proposed guidance targeting the agriculture and food, mining and metals, energy and financial institutions industries; and proposed guidance for four biomes, including tropical forests.

Taking the Temperature: The TNFD will continue to gather market feedback ahead of its final recommendations in September 2023 so that market participants can soon begin identifying, assessing and disclosing their nature-related issues. "Ongoing collaboration with our standards development partners and with regulators will also be critical to help codify the Taskforce's recommendations so that nature-related reporting becomes standard business practice over time," according to Elizabeth Mrema, TNFD Co-Chair and Deputy Executive Director of the United Nations Environment Programme. Globally, approximately 200 organizations are pilot testing aspects of the framework and the results of that testing will provide additional input into the final framework.

The fourth iteration of the draft framework follows the adoption of the historic "Kunming-Montreal Global Biodiversity Framework" by nearly 200 countries at the 15th Conference of Parties to the UN Convention on Biological Diversity (COP15) in December 2022. As we previously reported, the GBF, finalized after intense negotiations, sets forth four goals in furtherance of a 2050 Vision for Biodiversity as well as 23 targets for 2030. As observed by Mrema when commenting on COP15 attendance in Montreal, an increasing number of businesses, including large and transnational companies and financial institutions which are often regarded as ESG leaders, will need to ensure that they regularly monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity; provide information needed to consumers to promote sustainable consumption patterns; and report on compliance with access and benefit-sharing regulations and measures.

In addition to voluntary initiatives like TNFD, following COP15, legislators and regulatory authorities are also starting to include biodiversity considerations into climate-related policy initiatives. For example, in March 2023, we highlighted EU measures imposing stricter national targets relating to the preservation of natural ecosystems known as carbon sinks. The incorporation of biodiversity preservation in emissions reduction is aligned with the EU's biodiversity strategy for 2030.

As the regulatory and self-governance landscape around sustainability continues to evolve, it makes sense for companies, as well as their boards and executive leadership, to broaden their sustainability focus to consider (alongside climate change-related risks and opportunities) the potential impact of nature-related developments on their business, as well as their own contributions—positive and negative—to biodiversity preservation.

Report Underscores Challenges of Attracting Capital for Renewable Energy Development in the ASEAN Region

May 26, 2023

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In April 2023, the Centre for Climate Finance & Investment and the International Energy Agency **issued a report** identifying and addressing the investment gap in renewable and clean energy in the Association of Southeast Asian Nations (ASEAN) region. A joint publication of Imperial College London and IEA, the report notes that a number of countries in the region, including Vietnam, Thailand, Malaysia, Indonesia and Singapore, have signaled an intention to develop clean energy sources, including committing to ambitious decarbonization goals and increasing the role of renewable energy in their national energy development plans. Despite these efforts, development of renewable power projects in Southeast Asia is among the lowest globally, with slow and inconsistent growth hampered in large part by a lack of investment.

According to the report, renewable energy, mostly in the form of hydropower, accounts for an estimated 25% of installed capacity and power generation across the region. Vietnam leads in renewable power deployment with the development of solar photovoltaic and wind power. Thailand, Indonesia, the Philippines and Malaysia have also made some inroads into renewable energy generation. The report also highlights, however, that investment spending on fossil fuel-based energy remains entrenched, and absent a change in domestic policies and proactive planning to foster investment in renewable energy sources, countries in the region are likely to increase rather than decrease their reliance on fossil fuel-generated power.

The report observes that rapid development and urbanization across the region continue to drive demand for electricity, creating significant opportunity for investment in renewable energy. Known renewable resource potential in the region—for example, Vietnam has one of the best wind resources in Southeast Asia—also enhances the opportunities for development. Yet despite significant opportunities, investment in renewable energy has lagged. The average annual capital expenditures are less than $30 billion in renewable power over the past five years. To reach sustainability targets, the region will require exponentially higher levels of investment—at least $200 billion in energy investment by 2030, with more than 75% of that in clean energy. At least 60% of the investment in renewable power would need to come from private investment (which, according to the report, is low compared to the approximately 90% private investment in more developed economies), in order to foster the kind of growth necessary to meet both short- and long-term milestones.

The report identifies a number of hurdles to investment in the development of renewable energy projects, including uncertainty caused by delayed development and implementation of detailed government policies or plans, slow improvement in regulatory environments, and entrenched fossil fuel-based electricity generation resulting from inflexible power purchase arrangements.

The report also identifies a number of country-specific and regionwide priorities for encouraging investment in order to meet the region's climate commitments, with a focus on attracting lower-cost capital from international investors, including:

- detailed plans and policy initiatives for the transition to renewable energy sources;
- clearer regulatory frameworks supporting renewables projects;
- robust financial market frameworks for renewables and transition investments;
- an enhanced role for development finance institutions and blended finance;
- better data and improved transparency around project-level financial performance;
- coordinated currency exchange rate risk management; and
- improved regionwide connectivity through the development of the "ASEAN power grid."

Taking the Temperature: Notwithstanding the challenges noted immediately above, there is identifiable progress in certain of these areas. For instance, we previously have discussed efforts by the ASEAN Taxonomy Board to develop a Taxonomy for Sustainable Finance, which would support market and regulatory sustainability efforts. The Taxonomy is "designed to enable a just transition towards sustainable finance adoption by ASEAN Member States" by articulating underlying principles to "harmonise the classification of sustainable activities and assets across ASEAN."

Outside of the ASEAN region, there have been significant efforts to increase investment in the development of clean energy and green technology, with the United States and the EU signaling significant support for accelerating a green transition through legislation, including the U.S. Inflation Reduction Act (IRA) and the EC's Green Deal Industrial Plan and the proposed Net Zero Industry Act. Japan, India, China, Canada and the UK are also gearing up plans to foster and encourage investment in the development of green technology.

These initiatives taking hold in more developed regions across the globe are likely to generate significant financing and investment activity in developing non-fossil fuel energy sources. We also previously discussed the EU's increasing willingness to grant State Aid for schemes which help the bloc achieve its net-zero-by-2050 goal. As we have observed previously, creating legislative frameworks, developing reporting and disclosure models and incentivizing businesses and governments to run or fund green projects presents challenges for less-developed regions such as Southeast Asia to compete for investment dollars, despite recognized opportunities fueled by both growing energy demand and known renewable resource potential.

More generally, these efforts serve to underscore the pressing need for funds to finance mitigation and adaptation initiatives. We have previously discussed the focus on these

issues at last year's COP27 climate change conference in Egypt, where an agreement was reached to establish a dedicated fund to assist developing countries in responding to loss and damage caused by climate change; at the COP15 biodiversity conference in Montreal, where the main area of contention involved how to pay costs that will be incurred to realize the Global Biodiversity Framework's goals; and at the February 2023 meeting of G20 Finance Ministers in Bengaluru, India, where attendees called for the creation of a common global framework to facilitate financing the United Nations' Sustainable Development Goals.

EU's Global Gateway: €18 billion of financing announced for Climate Action and Clean Energy

May 26, 2023

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On April 28, 2023, the European Commission and the European Investment Bank (EIB) **announced their intention** to jointly provide €18 billion in funding to finance projects covering climate action, clean energy and connectivity in the EU's partner countries (an undefined list covering emerging markets). The financing contributes towards the Global Gateway's wider goal to raise €300 billion by 2027 to fund high-quality sustainable projects, providing investment to support the prevention, adaptation and mitigation of climate change in developing countries.

Through **Global Gateway**, which was launched by the EU and the EU High Representative in 2021, the EU aims to narrow the global investment gap in five key areas of partnership: the digital sector, climate and energy, transport, health and education and research. The €300 billion investment that Global Gateway aims to raise will comprise a mix of grants, concessional loans and guarantees to de-risk private sector investments.

The initiative uses a **"Team Europe"** approach that brings together the EU, its Member States and their financial and development institutions. **Climate-focused projects** currently planned by Global Gateway include a partnership with Guyana and Suriname in the South American region, which will focus on **green transition** through an initiative to reverse deforestation and enhance climate and biodiversity protection; a **"Sustainable Connectivity"** initiative that will support ASEAN electric grid interconnections to improve access to renewable energy and promote environmentally, economically, and socially sustainable value chains; and a **"Climate Change Adaptation and Resilience"** initiative, which will bring together existing and new climate change adaptation programs in sub-Saharan Africa worth over €1 billion.

Taking the Temperature: The EU and its Member States remain the world's leading donor for developing nations, providing 43% of global Official Development Assistance in 2022. However the EU's Global Gateway strategy has been criticized for the lack of detail around actual projects, with the EU instead publishing high-level summaries of potential projects. It has also received criticism for appearing to recycle existing development funds for projects that were already in existence. According to the EIB, however, Global Gateway is on track to achieving its €300 billion goal but transparency as to where those funds will be invested remains lacking. As we have discussed in a companion piece today, developing nations require increased investment to advance green transition

initiatives and address the impacts of climate change. Calls by these nations for wealthier countries to fund future climate-mitigation investments and to compensate for loss and damage have only increased following climate- change-induced disasters and the global energy impact caused by the war in Ukraine. Global Gateway is an example of one response to these calls for assistance.

Other initiatives mark signs of progress. At COP27 last year, an agreement was reached to establish a dedicated “loss and damage” fund to assist developing countries respond to loss and damage caused by climate change. More recently in March 2023, the G20 Finance Ministers and Central Bank Governors committed to mobilize $100 billion climate finance per year by 2020 and annually through 2025 to address the needs of developing countries, and President Biden this month pledged $1 billion to the Green Climate Fund program led by the United Nations to help developing countries become more resilient to climate change and transition to clean energy sources.