

ALSTON & BIRD

ESG Sustainability Spotlight

Q4 | 2025



In today's business world, environmental, social, and governance (ESG) issues have taken center stage, and companies, both public and private, are increasingly recognizing the significance of ESG responsibility. Today's executives, managers, and stakeholders find themselves navigating a complex landscape filled with risks and opportunities.

The ESG Imperative

ESG encompasses a broad spectrum of factors that impact a company's long-term sustainability and performance. Let's break down what each component entails:

- **Environmental (E):** This dimension focuses on a company's impact on the environment. It includes considerations such as carbon emissions, resource usage, waste management, and climate change resilience.
- **Social (S):** The social aspect encompasses how a company interacts with its employees, customers, communities, and other stakeholders, as well as the non-environmental impacts of its supply chain. Topics like diversity and inclusion, labor practices, human rights, and community engagement fall under this category.
- **Governance (G):** Governance refers to the systems and processes that govern a company's decision-making. It involves board composition, executive compensation, transparency, and adherence to ethical standards.

Welcome to the ESG Sustainability Spotlight

The ESG landscape continued to fragment in the fourth quarter of 2025, marked by a further regulatory pullback at the federal level, alongside active (and often divergent) state, shareholder, and private litigation initiatives.

A centerpiece of this shift was the SEC Division of Corporation Finance's November 2025 Statement Regarding Its Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season, in which the division announced it would largely stop issuing no action responses on proxy exclusions of shareholder proposals, other than exclusions of proposals that are not a proper subject for action under applicable state law. This announcement—

following public remarks by SEC Chair Paul Atkins criticizing the proliferation of ESG related shareholder proposals—has materially reshaped the shareholder proposal landscape.

While this development may reduce the volume of ESG-related proposals reaching proxy ballots, companies continue to face growing pressure from state attorneys general and private litigants addressing greenwashing, ESG-related disclosure accuracy, and fiduciary oversight over ESG issues. These developments underscore that ESG related risk has not abated—it has, instead, largely shifted toward decentralized enforcement and private litigation.

Alston & Bird's ESG Advisory Team

At Alston & Bird, our ESG Advisory Team provides strategic guidance to companies navigating the ESG landscape. Our services include:

- **Understanding ESG Dynamics.** We help companies grasp the nuances of ESG and tailor their approaches accordingly.
- **Regulatory Insights.** Our team stays abreast of ESG-related regulations worldwide, ensuring clients remain compliant.
- **Shareholder Engagement.** Crafting effective responses to shareholder proposals requires expertise. We guide companies in this critical area.
- **Risk Mitigation.** Minimizing litigation and enforcement risk is crucial. Our strategies and materials help companies proactively address potential legal challenges.

ESG Tracker and Sustainability Spotlight

Our [ESG Tracker](#) and this publication offer valuable insights into federal and state enforcement actions, litigation trends, and shareholder proposals. They serve as a resource for companies seeking to stay informed and make up-to-date decisions on all matters related to ESG.

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[Environmental, Social & Governance \(ESG\) Team](#)

NOVEMBER

SEC Corporation Finance Division Will Only Review Shareholder Proposals Violating State Law for the 2025–2026 Proxy Season

November 17, 2025 | [Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season](#)

The SEC's Division of Corporation Finance announced that it will no longer respond to most no-action requests involving the exclusion of shareholder proposals under Rule 14a-8 for the 2025–2026 proxy season. The division cited resource constraints following the recent government shutdown, as well as the heavy volume of other filings requiring the division's attention.

This announcement follows SEC Chair Paul Atkins's October remarks criticizing the prevalence of ESG-related shareholder proposals. Requests under Rule 14a-8(i)(1), which permits the exclusion of proposals that address matters improper for shareholder action under state law, will not be affected by this change. The division's continued review of requests under Rule 14a-8(i)(1) signals the SEC's intent to push back on ESG proposals that overstep shareholder authority under state law.

OCTOBER

SEC Chair Seeks to Limit Shareholder ESG Proposals

October 9, 2025 | [Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala](#)

SEC Chair Paul Atkins, in remarks at a corporate governance gala, announced the SEC's plans to revisit rules requiring companies to include ESG-related shareholder proposals in proxy filings. He argued that the current framework has contributed to the "politicization of shareholder meetings," which prompted the commission to reassess the regulation's original intent. Atkins's comments align with the SEC's previously announced regulatory agenda, which aimed to alleviate compliance burdens by giving public companies greater discretion in determining what information is material for shareholder disclosure.



DECEMBER

Electric Vehicle Manufacturer Hit with Derivative Suit over Prices Following Shareholder Class Action Settlement

December 20, 2025 | *Bondad v. Scaringe*, [No. 8:25-cv-02819](#) (C.D. Cal.).

Rivian Automotive shareholders have filed a derivative claims suit on behalf of the company, alleging that certain current and former directors and officers failed to disclose the true cost of manufacturing its flagship electric vehicles. The complaint alleges that the defendants portrayed future price hikes as a mere possibility, despite knowing that production costs were in fact significantly higher than projected. The plaintiffs allege that Rivian's subsequent announcement of the price increases damaged its reputation and share price.

The complaint argues that these alleged omissions have impaired Rivian's ability to raise capital on favorable terms and increased its cost of debt. The derivative action follows a related securities class action that recently received preliminary approval for a \$250 million settlement.

Solar Company Faces Derivative Suit over Purchase from Felon Convicted of Environmental Crimes

December 10, 2025 | *Kaszirer v. Zartler*, [No. 4:25-cv-05944](#) (S.D. Tex.).

Solaris Energy Infrastructure shareholders have filed a derivative claims suit on behalf of Solaris over the energy solutions company's alleged failure to disclose the risks of acquiring turbine leasing company Mobile Energy Rentals. The complaint alleges that certain current and former directors and officers made false and misleading statements about the "cultural and operational fit" of the acquired company, despite Mobile lacking relevant experience. The complaint also references Mobile's co-owner's history of turbine-related fraud and felony environmental crimes. Morpheus Research released a report focusing on Mobile's operational issues and claiming that Mobile derived over 95% of its revenue from a single customer, rather than having a "diversified earnings stream" as claimed. The release of the Morpheus Research report caused a sharp decline in Solaris's stock price.

The plaintiffs also contend that the individual Solaris defendants breached their fiduciary duties by artificially inflating the company's stock price and engaging in illicit insider sales. The derivative action follows a related pending securities class case.

Ninth Circuit Rejects Shareholder Claims Tied to Fashion Collaboration

December 3, 2025 | *HRSA-ILA Funds v. Adidas AG*, [No. 24-6655](#) (9th Cir.).

The Ninth Circuit affirmed a federal court's dismissal of a putative class action filed by Adidas shareholders. Shareholder plaintiffs filed suit in May 2023, alleging that Adidas failed to disclose the risks of relying on Ye West in a multibillion-dollar fashion collaboration with the rapper. The district court dismissed the plaintiffs' claims for failure to plead an actionable material misstatement or omission. The plaintiffs appealed to the Ninth Circuit, arguing that Adidas materially misrepresented its collaboration with West by calling the risk of his antisemitic and other improper behavior "hypothetical." The three-judge panel affirmed the district court's dismissal.



NOVEMBER

Florida Attorney General Sues Proxy Advisory Firms over ESG Advice

November 20, 2025

Florida is [suing](#) proxy advisory firms Institutional Shareholder Services Inc. (ISS) and Glass Lewis & Co. LLC, alleging the firms are improperly promoting ideological and environmental causes. The lawsuit accuses ISS and Glass Lewis of advising their institutional investors to vote in favor of environmental, social, and governance issues without any traditional financial analysis being done. Florida Attorney General James Uthmeier stated, "Florida is done allowing two unaccountable foreign-owned private corporations to manipulate shareholder votes behind closed doors." The state accuses the firms of violating the Florida Antitrust Act and the Deceptive and Unfair Trade Practices Act and seeks civil penalties, injunctive relief, and restitution for affected consumers.

SEPTEMBER

Sixteen State Attorneys General Challenge Greenwashing Claims by Big Tech

September 24, 2025

Sixteen state attorneys general launched an [investigation](#) into big tech companies Meta, Amazon, Microsoft, and Google, alleging that their claims of using 100% renewable energy in their operations are misleading. A letter signed by the attorney general coalition explains how these claims are based on the use of unbundled renewable energy certificates (RECs). Using RECs involves buying rights to sustainable energy that a company did not generate or use themselves. In the letter, the AGs argue that Meta, Amazon, Microsoft, and Google have all purchased RECs and are relying on these purchases to back their claims of using 100% renewable energy in their operations.



NOVEMBER

Value-Based Investor Nonprofits Challenge Texas Proxy Advisor Law

November 10, 2025 | *Interfaith Center on Corporate Responsibility v. Paxton*, No. 1:25-cv-01803 (W.D. Tex.).

Three nonprofit organizations focused on faith- and value-based investing filed a complaint against the Texas attorney general alleging that the passage of SB 2337 violates the First Amendment by restricting speech based on content and viewpoint without a compelling state interest. The complaint alleges that SB 2337 unconstitutionally restricts and chills speech related to shareholder advocacy by requiring organizations providing “nonfinancial” advice, such as that related to ESG and sustainability issues, to publicly state that the advice is “not provided solely in the financial interest of shareholders of the company” and by imposing burdensome requirements on proxy voting advice based on “nonfinancial factors.” The plaintiffs argue that SB 2337 is facially unconstitutional and impermissibly vague and chills speech about value-based investing, including investing based on religious beliefs. The plaintiffs bring two claims under the First Amendment and the Fourteenth Amendment, and seek declaratory and injunctive relief.

Eighth Circuit Upholds Dismissal with Prejudice of Putative Class Action over “Sustainable” Sneakers

November 7, 2025 | *Ellis v. Nike USA Inc.*, No. 24-2420 (8th Cir.).

The Eighth Circuit affirmed the Eastern District of Missouri’s dismissal with prejudice of a plaintiff consumer’s putative class action against Nike USA Inc. and its subsidiary alleging violations of the Missouri Merchandising Practices Act. The plaintiff alleged that the defendants falsely and misleadingly

advertised their “Sustainability Collection” products as sustainable and environmentally friendly because none of these two thousand products, the plaintiff alleged, were made with any sustainable materials or recycled or organic fibers and instead were made with virgin synthetic and non-organic materials. The district court granted Nike’s motion to dismiss, finding that the plaintiff failed to provide information substantiating her “unadorned conclusion.” The Eighth Circuit found that the district court did not err in dismissing the plaintiff’s claims with prejudice for several reasons: there is a presumption that a dismissal under Rule 12(b)(6) is a judgment on the merits made with prejudice, the plaintiff failed to properly seek leave to amend her complaint, and the plaintiff failed to allege sufficient facts even after being granted leave to amend.

OCTOBER

Claims of Misleading Statements on Electric Vehicle Rentals Survive

October 15, 2025 | *Doller v. Hertz Global Holdings Inc.*, No. 2:24-cv-00513 (M.D. Fla.).

A Florida judge dismissed several securities fraud claims against Hertz Global Holdings Inc. stemming from the company’s statements that it was seeing strong demand for electric vehicles (EVs) that claimants had argued artificially boosted stock prices. The judge did not, however, dismiss the claims related to two alleged misstatements purportedly at odds with the actual trends in consumer demand for EVs. Both of the statements at issue were made by then-CEO Stephen Scherr in 2023, and both claimed strong demand for EV rentals across the company—a claim that was allegedly untrue.



Executive Order Targeted Proxy Advisors and Shareholder Proposals

On December 11, 2025, the White House published an Executive Order aimed at proxy advisors and shareholder proposals. Specifically, the Order called out Institutional Shareholder Services (ISS) and Glass Lewis, claiming that the firms “use their substantial power to advance and prioritize radical politically-motivated agendas – like ‘diversity, equity, and inclusion’ and ‘environmental, social, and governance.’” The Order argued that investor returns should be the only priority. The Order directed the chair of the Securities and Exchange Commission (SEC), chair of the Federal Trade Commission, and Secretary of Labor to review and, if necessary, revise regulations and guidance in accordance with the Order’s stated purposes.

Among other directives, the Order also instructed the SEC chair to consider revising or rescinding rules related to shareholder proposals, including Rule 14a-8, that are inconsistent with the Order’s purpose. Rule 14a-8 has already been the subject of recent reconsideration by the SEC (for example, the chair’s keynote address and the SEC’s updated guidance). Before the Order’s issuance but amid the White House’s continued criticisms, ISS announced policy changes to its advising strategy, including a case-by-case approach to shareholder proposals on diversity and climate change. Glass Lewis similarly updated its advising approach, noting that further updates may be required given the ongoing changes in the shareholder proposal process.

CARB Proposes Regulatory Text for the SB 253 and SB 261 Initial Regulation

On December 23, 2025, the California Office of Administrative Law [published](#) the proposed regulatory text for the SB 253/ SB 261 initial regulation governing new disclosure and reporting obligations. The proposed regulations are largely consistent with the California Air Resource Board’s (CARB) guidance provided during its November 18, 2025 public workshop, with a few new provisions. Importantly, the definitions of key threshold terms including “business entity,” “revenue,” and “doing business in California,” the proposed exemptions from reporting, and the first-year reporting deadline for SB 253 remain the same as indicated in CARB’s previous guidance. The proposed regulation also includes a framework to assess administration and implementation cost-recovery fees, as well as provisions for recordkeeping obligations and the enforcement of penalties. CARB has stated that it will not enforce the proposed regulation, even if adopted, unless the Ninth Circuit lifts its injunction.

CARB Will Not Enforce SB 261 for Failure to Submit Reports by January 1, 2026

On December 1, 2025, CARB released an [enforcement advisory](#) stating that in light of the Ninth Circuit’s injunction issued on November 18, “CARB will not enforce Health and Safety Code section 38533 [SB 261] against covered entities for failing to post and submit reports by the January 1, 2026, statutory deadline.” CARB also indicated that after the appeal is resolved it will provide further information, including an alternate date for reporting. Also on December 1, 2025, CARB opened its [public docket](#) for posting SB 261 reports for entities that choose to “voluntarily submit” their SB 261 reports. The docket includes fields to submit contact information, provide a link to the company website containing the report, and upload a company statement on official letterhead. Entities submitting consolidated reports must specify the list of subsidiaries included in the report.



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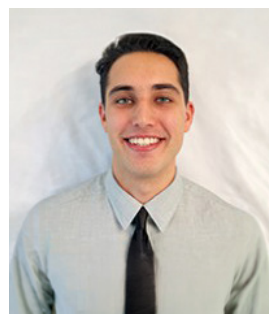
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