KIRKLAND & ELLIS

Energy Blog

Directors and Executives Position Themselves to Lead on Climate

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In the last two weeks, the conflict in Ukraine has underlined the volatility of a globalized energy economy and shifting energy transition landscape. At the same time, a recently released report from the Intergovernmental Panel on Climate Change spotlights the cascading physical impacts of a changing climate and the adaptation challenges it poses. Together, these developments are the latest signal of the imperative for leaders to be informed on the challenges and opportunities climate change poses to businesses and assets, particularly in the energy and infrastructure sectors.

Analysis from S&P Global finds that the Utilities and Energy sectors are among the most exposed to the physical risks of climate change, and an October 2021 report on climate-related risk from the Financial Stability Oversight Council explicitly identifies those sectors as likely to be most affected by the transition toward a lower carbon future. Energy and infrastructure firms are taking notice. According to the 2021 annual report of the Task Force on Climate-related Financial Disclosures ("TCFD"), the Materials & Buildings and Energy industries lead peers in overall disclosure along the TCFD's framework.[1]

At the same time, however, directors and executives often feel unprepared to navigate evolving demands from investors, regulators, and an increasingly engaged public. According to a recent survey of 301 directors, 75% of board members said that climate change is very or entirely important to the strategic success of their companies, yet 85% said their board needs to increase its climate knowledge and 50% said they are not yet fully satisfied with their company's climate-related reporting to the board. And the pressure is only expected to increase, particularly in light of the SEC's recent announcement that it will vote on a highly anticipated climate-related disclosure regulation on March 21, meaning a proposed rule is expected to be released shortly thereafter.

Fortunately, new programs are becoming available that help enable directors and executives to master the fundamentals of climate risks and opportunities, and prepare to lead in a world where climate change is central to operations, financing, and relationships with shareholders and other stakeholders. For example, Diligent recently launched a Climate Leadership Certification course that features discussions and content input from Kirkland ESG & Impact partners Paul Barker, Ruth Knox, and Jennie Morawetz, as well as other climate thought leaders. The approachable, self-paced course covers topics such as fiduciary duty, structuring oversight of climate risk, climate commitments, climate litigation, and carbon markets. Directors and executives may wish to consider taking advantage of this program and other similar learning opportunities, so that they can better develop and communicate effective climate strategies for their firms.

Kirkland's ESG & Impact practice includes an international team of lawyers who help clients navigate climate-related obligations, risks, and opportunities. For more information about Kirkland's practice and its participation in the Diligent course, contact Alexandra Farmer, Paul Barker, Ruth Knox or Jennie Morawetz.

Tony Moller provided valuable research and drafting assistance in support of this post.

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1. We discussed the TCFD's most recent annual report and updates to its guidance in our November 2021 *Alert*, "TCFD Issues New Guidance as Its Climate Reporting Framework Continues to Gain Traction."↩

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