

## Companies Face Scrutiny Over Environmental-Related Disclosures

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PRACTICES Environmental

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Entities that file disclosures with the Securities and Exchange Commission (“SEC”) should be aware of recent actions by regulators and shareholders questioning the sufficiency of opinion statements made in environmental - related disclosures. Most recently, on March 31, 2016, the SEC announced a settlement with Navistar International Corp. to address charges that the company, an Illinois - based heavy duty trucking company, misled investors when it “failed to fully disclose the company’s difficulties obtaining Environmental Protection Agency (“EPA”) certification” of a particular truck engine. The SEC also filed separate charges in the Northern District of Illinois against the company’s former CEO, Daniel Ustian, alleging that he aided and abetted Navistar’s violations when he “engaged in a cover - up” that misled investors.

The SEC suit follows recent enforcement efforts by the New York Attorney General (“ NYAG ”) and shareholder lawsuits that also alleged misstatements and omissions in corporate disclosure documents relating to (i) compliance with environmental regulations, (ii) environmental risk factors, and/or (iii) corporate governance disclosure requirements. Moreover, the U.S. Supreme Court’s decision in *Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund*, 135 S. Ct. 1318 (2015), has created additional uncertainty regarding liability for opinion statements made in disclosure documents. In light of these markers, a perfect storm for increased regulatory intervention is brewing.

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